

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF OREGON

3 UNITED STATES OF AMERICA,)

4 Plaintiff,)

5 v.)

6 PIROUZ SEDAGHATY, et al.,)

7 Defendants.)

) No. 05-60008-2-HO

) September 7, 2010

) Eugene, Oregon

8
9 PARTIAL TRANSCRIPT OF TRIAL PROCEEDINGS

10 BEFORE THE HONORABLE MICHAEL R. HOGAN

11 UNITED STATES DISTRICT COURT JUDGE, AND A JURY

12 DAY 6 A.M. SESSION - PAGES 1 - 119

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1 (Tuesday, September 7, 2010; 9:10 a.m. Jury absent.)

2 (Mr. Casey is absent from the courtroom.)

3 P R O C E E D I N G S

4 THE COURT: Seat the jury.

5 MR. CARDANI: Judge, we have three matters that
6 we think we should take up before the jury comes in.

7 THE COURT: All right.

8 MR. CARDANI: The first one, we would like
9 authorization from the court to have the defendant's
10 passports, presently in the custody of Pretrial Services
11 in Portland --

12 THE COURT: I've heard that. Is there any
13 objection to that?

14 MR. WAX: I'm not sure what the request is.

15 MR. CARDANI: The request would be that the
16 passports that are currently in the custody of Pretrial
17 Services in Portland be released to the FBI for use in
18 Mr. Seda's cross-examination.

19 THE COURT: Granted.

20 MR. CARDANI: Second, Mr. Owens is the first
21 witness for the defense today, and there is another one
22 named Mr. Long coming shortly after that. If I
23 understand correctly, both of these individuals will
24 use, as the basis of their testimony, that they relied
25 on the Saudi receipts that you have excluded from

1 evidence. If they do that, we would like to test their
2 credibility on cross-examination by asking them if they
3 were aware that this organization was a
4 specially-designated global terrorist organization by
5 the U.N., certain offices shut down, Saudi government
6 shut them down, and it would be offered to impeach them.

7 This has been -- the court has ruled that this
8 is not an area for our case in chief. We followed that,
9 but we think this will be door opening.

10 MR. MATASAR: I can just speak with regard to
11 Mr. Owens. While I'd like to engage Mr. Cardani on the
12 issue, Mr. Owens is not going to rely on the receipts.
13 So I don't think we need to engage in that issue.

14 As far as Mr. Long, I'll let Mr. Wax address
15 that.

16 MR. WAX: Dr. Long --

17 MR. MATASAR: Dr. Long.

18 MR. WAX: Dr. Long has seen the receipts and
19 Dr. Long believes that the receipts are relevant to the
20 question of what happened to the money. And that the
21 presence of the number -- of the account number 9889
22 that matches up with the list of the Al Rajhi accounts
23 is a relevant fact. And I do not see how that should in
24 any way open up the area or question of the designation
25 of the organization.

1 THE COURT: The door was opened in Colonel
2 Lang's testimony. You may do so.

3 MR. CARDANI: And, finally, the last matter is
4 the defense has notified us about a brand new expert
5 over the weekend. I think we were told about it on
6 Friday. I'm sorry, Sunday. Some expert out of Portland
7 to talk about memory, and the reliability of memory
8 vis-à-vis Mr. Wilcox. We've gotten a one-paragraph
9 summary. We've gotten no reports. No *Daubert* ability
10 to test anything. So at this point, we object on
11 timing, our ability to prepare his cross-examination,
12 and more fundamentally, we don't see it -- we see it not
13 relevant to anything, and invading the province of the
14 jury on credibility findings.

15 MR. WAX: Dr. Daniel Reisberg is a professor at
16 Reed College. He's testified numerous times in both
17 state and federal courts. His area of study is memory.
18 He, after reviewing the testimony from Mr. Wilcox, and
19 seeing that he shifted his testimony with respect to the
20 \$2060 check based on things that he saw and that he
21 shifted his testimony about the date of the meeting that
22 he alleges occurred September 25 to September 24, I
23 called Dr. Reisberg, and I did so because I'm familiar
24 with his body of research, and we have used him in cases
25 in Portland. I immediately let the government know that

1 I had done so. I did so at that late date because it
2 seemed to me that Wilcox's testimony made this issue
3 relevant.

4 The essence of his testimony will be that
5 studies of memory show that people conform their memory
6 to what they believe to be the facts, and that
7 conformance of memory to what they believe to be the
8 facts with things that are shown to them is not
9 reliable.

10 He will also say that that is an unconscious
11 matter, that the people are not aware of it. I think
12 that the description of how memory works is an area that
13 is within the heartland of what expert witnesses can and
14 should be permitted to testify about. I do not believe
15 that it is something that is within the knowledge of a
16 lay jury. And that is what I would intend to call him
17 to ask about. I anticipate that his testimony would be
18 short.

19 In terms of any logistical matters that would
20 relate to his testimony, he -- his teaching, he would be
21 available to testify this afternoon by phone or video
22 hookup if we could get him to the courthouse in
23 Portland, and we could arrange that at 3:00. He would
24 be able to drive down to Eugene tomorrow morning. He
25 has class at 12:00 or 1:00. So we'd need to try to get

1 him on and off first thing.

2 In discussion with the government, we think
3 that it is reasonable likelihood that the defense case
4 will conclude today. So if that occurred tomorrow
5 morning, it would be part of the core of the defense
6 case.

7 THE COURT: Camus also wrote about the subject,
8 but you have to identify experts early, and this is not
9 soon enough. I'm not going to permit that, a new expert
10 at this time.

11 Please seat the jury.

12 MR. MATASAR: Your Honor, we don't have to take
13 it up right now, but at some point I want to address --
14 we filed a short memo about Mr. Cardani's hypothetical,
15 and we can take that up --

16 THE COURT: About his what?

17 MR. MATASAR: Hypothetical question. We can
18 talk about it next time.

19 (Jury enters the courtroom at 9:17 a.m.)

20 THE COURT: Members of the jury, I hope you had
21 a good, long weekend. I'll tell you more about this
22 later (indicating).

23 Call your next witness, please.

24 MR. MATASAR: We call Marcus Owens.

25 THE CLERK: Please raise your right hand.

1 (The witness was sworn.)

2 THE CLERK: Please step around. Please have a
3 seat. You'll be speaking into the microphone. There is
4 water.

5 Please state your full name, and spell your
6 name for the record.

7 THE WITNESS: My name is Marcus Sherman Owens,
8 spelled M-A-R-C-U-S, S-H-E-R-M-A-N, and O-W-E-N-S.

9 DIRECT EXAMINATION

10 BY MR. MATASAR:

11 Q. Do we need the microphone closer to the witness
12 or turn it up?

13 Mr. Owens, how are you employed?

14 A. I'm a lawyer with the Washington, D.C. law firm
15 of Caplin & Drysdale.

16 Q. When did you become a member of that firm?

17 A. I became a member of that firm in early 2000.

18 Q. What was your position before becoming a member
19 of Caplin & Drysdale?

20 A. My position immediately before becoming a
21 member was as director of the Exempt Organizations
22 Division of the U.S. Internal Revenue Service.

23 Q. What were your duties as the director of the
24 Exempt Division?

25 A. My duties included supervising the employees of

1 the division, which was approximately 100, 120 people.
2 It included serving as the ultimate decision-maker, if
3 you will, for matters involving tax exempt
4 organizations, administration of tax laws applicable to
5 the tax exempt organizations.

6 Q. How long did you serve in that position?

7 A. I was director for ten years, from 1990 until
8 2000.

9 Q. And what -- how long had you worked at the IRS
10 before becoming director?

11 A. I had worked at the IRS for 15 years before
12 becoming director.

13 Q. What did you do in the years previous to
14 becoming a director?

15 A. I held a series of positions all in the Exempt
16 Organizations Division, beginning with the position of
17 tax law specialist, which is the classification for an
18 attorney not employed within the Office of Chief Counsel
19 of the IRS. I then became technical advisor to the
20 division director. And then just before becoming
21 division director, I was the -- what is known as the
22 executive assistant, which is functionally the deputy
23 division director for the division.

24 Q. So that's -- if I counted right -- about
25 25 years working for the Internal Revenue Service?

1 A. Correct.

2 Q. In your work there, have you reviewed cases of
3 tax exempt organizations?

4 A. Yes.

5 Q. In what context would you do that?

6 A. In two primary contexts. The first is the
7 Exempt Organizations Division serves as the final
8 administrative appeal within the Internal Revenue
9 Service for cases that have -- considered to be
10 significant, have precedential value. More routine
11 cases go to IRS Appeals Division. So in the context of
12 working on the final rulings on cases moving through the
13 IRS, I would be involved in particular cases.

14 And then the Exempt Organizations Division at
15 that time had a program known as a post-review program
16 in which the case work of the various field offices in
17 the exempt organizations function was reviewed for
18 accuracy and consistency. And I conducted many of those
19 reviews in my years there.

20 Q. So you have reviewed, I take it, many, many tax
21 exempt organizations?

22 A. Yes.

23 Q. Hundreds, is that fair to say? More?

24 A. More like thousands.

25 Q. Did you also work on developing IRS rules and

1 maybe changing the tax forms?

2 A. Yes. The division had responsibility for
3 maintaining the Internal Revenue manual, which is the
4 list of instructions to revenue agents on how to operate
5 or administer the tax code. The division also developed
6 revenue rulings and revenue procedures, which are
7 guidance documents for both the IRS and for taxpayers.

8 Also participated in the drafting of
9 regulations, and from time to time interacted with
10 Congress on legislation moving through Congress.

11 Q. And have you reviewed audits, that is to say
12 audits or investigations that other people have done of
13 tax exempt organizations?

14 A. Yes.

15 Q. And you trained the auditors; is that fair to
16 say as well?

17 A. That's right. One of the functions of the
18 Exempt Organizations Division was to conduct a periodic
19 continuing professional education training for revenue
20 agents specializing in tax exempt organizations.

21 The division produced a volume each year known
22 as a continuing professional education text, in essence,
23 a summary of legal developments during the year that
24 formed the core of the training each year. And the
25 training occurred in sessions held around the country.

1 I, or a team of attorneys who worked for me, would make
2 those presentations each year.

3 Q. And the defense has retained you as an expert
4 to assist Mr. Seda on this case?

5 A. That's correct.

6 Q. Are you charging us?

7 A. Yes, I am.

8 Q. How much are you charging us per hour?

9 A. \$300 an hour.

10 Q. Is that your regular rate?

11 A. No, it is not.

12 Q. What would your regular rate be?

13 A. \$595 an hour.

14 Q. And this rate is okay with your partners, this
15 reduced rate?

16 A. Yes, it is.

17 Q. Could you tell the jury why it is that some
18 organizations are exempt from tax?

19 A. Well, Congress enacted a series of provisions
20 in the Internal Revenue Code, in fact, 29 different
21 provisions. Each one describes a particular kind of
22 organization whose income is exempt from federal tax.
23 And one of those is Section 501(c)(3), which involves
24 charities, what we commonly know as a charity. Other
25 sections involve other kinds of organizations. And

1 Congress made a policy decision that if each of those
2 organizations was doing something useful, was
3 sufficiently distinct from an ordinary commercial
4 business activity, that is a taxpayer, that they
5 deserved to be tax exempt.

6 There are other aspects to each category of tax
7 exemption that make for differences between the various
8 categories. The primary difference is that
9 contributions to charities are deductible as
10 contributions on an individual's Form 1040, whereas
11 contributions to other kinds of tax exempts like trade
12 associations or labor unions are not deductible as
13 charitable contributions.

14 Q. Mr. Owens, a charity can give aid to the poor,
15 orphans and refugees?

16 A. Correct.

17 Q. And they could give aid to assist wounded
18 soldiers, fighters, and other combatants?

19 A. Correct.

20 Q. Including food and blankets, for example?

21 A. To wounded combatants, correct.

22 Q. What is the history of this sort of aid?

23 (Mr. Casey enters the courtroom.)

24 A. Well, the history is actually quite extensive.
25 You can find the earliest indications that assisting the

1 wounded would be an appropriate charitable activity. In
2 the preamble to the statute of charitable uses, which
3 was passed by English Parliament in 1501 and serves as
4 sort of the bedrock document for the development of the
5 law of charity both in the United Kingdom and in the
6 United States, and, in fact, that preamble served as the
7 model that the Treasury Department used in 1959 when it
8 wrote regulations defining what is a charity for the
9 Internal Revenue Code.

10 So even 500 years ago, there are indications
11 that that would be a charitable activity. Subsequent to
12 that, during the American Civil War, Betsy -- rather --

13 Q. Clara Barton?

14 A. Clara Barton, yes, Clara Barton established the
15 American Red Cross, and made a point of taking care of
16 the wounded on both sides in the American Civil War.

17 At the same time, you had the Geneva
18 Conventions developed. The first one was developed in
19 1863. Subsequent conventions, taken together, show that
20 caring for the wounded, those who are both wounded
21 because they were combatants and those wounded as an
22 unfortunate byproduct of the war, was deemed to be an
23 appropriate activity, and given special sanction under
24 international law.

25 And, in fact, it's echoed in the organizing

1 documents of the American Red Cross today.

2 Q. Hospitals were rebuilt with charitable funds in
3 Hanoi during the Vietnam War?

4 A. Yes. In fact, there are a series of articles
5 in the *New York Times* from 1975 describing how U.S.
6 charities attempted to collect money, in fact, did
7 collect money, to rebuild the Bach Mai Hospital in Hanoi
8 which was destroyed by the U.S. Air Force during the
9 Vietnam War. The charities collected money. One of
10 them applied for tax exemption. And the articles
11 described how the IRS initially tried to revoke the tax
12 exempt status, but ultimately relented, and allowed it
13 to continue so --

14 Q. Can --

15 A. Sorry. So even though in current times, there
16 are examples of taking care of the wounded or providing
17 ways for the wounded to be cared for that have been
18 deemed to be charitable.

19 Q. And as recently as the last year or two, the
20 Red Cross was giving money to the Taliban; is that
21 correct?

22 A. That has been reported in the media, yes.

23 Q. To be clear, it would not be a charitable
24 purpose for the Red Cross or anyone to buy guns or bombs
25 for the Taliban?

1 A. That is correct.

2 Q. Mr. Owens, are you familiar with Form 990?

3 A. Yes, I am.

4 Q. Maybe we can show the first page of IRS-1,
5 Susan. Can you do that, Ms. Cooke? What kind of
6 organizations file Form 990?

7 A. Organizations that are exempt from federal
8 income tax. It is the general reporting form that is
9 used by charities and by other types of tax exempt
10 organizations and by political organizations.

11 Q. So a pretty wide variety, a small charity, and
12 a big charity like United Way would all file this form?

13 A. As would colleges, universities, hospitals,
14 labor unions, trade associations, and political parties.

15 Q. The United Auto Workers would file this form.
16 It's just a wide group of people?

17 A. Correct, correct.

18 Q. By the way, do churches file Form 990?

19 A. Churches do not file Form 990.

20 Q. So if an organization, al-Haramain United
21 States, had a congregation that met regularly for
22 collective worship, could they have pressed their claim
23 with the IRS and have been declared a church?

24 A. Yes.

25 Q. And that's even though they distributed books?

1 A. Correct.

2 Q. And if the IRS had declared al-Haramain U.S.A.
3 a church, they wouldn't have had to file a 990 at all?

4 A. They would not have had to file a 990, that is
5 correct.

6 Q. Is there a history of errors on the 990,
7 mistakes being made by organizations that file it?

8 A. Yes.

9 Q. And what kind of errors, if you can just give a
10 short description of some of the errors that studies
11 have shown appear regularly on a 990.

12 A. Just about every error one can conceive of,
13 from failing to sign the return through leaving off
14 required schedules, including Schedule A, which is a
15 very significant schedule. And that continues even
16 today with a new form, missing schedules, incomplete
17 answers to questions are relatively common.

18 Q. So the form that was filed in the year 2000 has
19 been improved upon for -- by the time we're filing the
20 2010 form?

21 A. I'll say it's certainly been made more
22 complicated.

23 Q. I see. Was there a line 22 schedule filed with
24 this IRS-1? Are you aware of that?

25 A. I've looked at that Form 990, the 2000 Form

1 990, and there was no schedule relating to line 22.

2 Q. Are there errors commonly seen on Schedule A,
3 question 51? If Ms. Cooke could show page 13 of this
4 form. You are familiar with that provision?

5 A. Yes, I am.

6 Q. Number 51. If there were a payment of \$150,000
7 from al-Haramain United States to al-Haramain Riyadh,
8 would that appear on this Schedule A, line 51?

9 A. No, it would not.

10 Q. It would not. Why not?

11 A. Because the instructions explicitly state that
12 the only organizations with whom financial relationships
13 should be reported are those that are exempt under other
14 sections of 501(c) and 501(c)(3) or political
15 organizations described in Section 527.

16 In other words, organizations like al-Haramain
17 Riyadh or al-Haramain Saudi, which are not exempt under
18 any section of 501(c)(3) would not be reported here.
19 And that is explicit in two places in the instructions,
20 and it's clear in the legislative history of Section
21 6033, which is the section that mandates the Form 990.

22 Q. Mr. Owens, you were able to review Agent
23 Wooten's testimony in this case in a transcript?

24 A. Yes, I was.

25 Q. What was your rank at the IRS compared to his?

1 A. I was the highest level IRS official with sole
2 responsibility for tax exempt organizations. I was
3 three steps below the Commissioner of the Internal
4 Revenue.

5 Mr. Wooten was a revenue agent in the field,
6 later a revenue agent supervisor.

7 Q. As a revenue agent supervisor, would that
8 position report directly to you, or are there other
9 levels in between the two of you?

10 A. At the time it would not have reported to me.
11 There would have been many levels -- actually his
12 structure reported to district directors to regional
13 commissioners. It was a different supervisory
14 structure.

15 Q. Are you familiar with the instructions for Form
16 990 at the time, year 2000?

17 A. Yes, I am.

18 Q. Do you know if they give a suggested amount of
19 time to complete a Form 990?

20 A. Yes, they do.

21 Q. About how long?

22 A. Well, they divide the Form 990 and the time
23 required into time devoted to collecting information, to
24 record keeping, time devoted to reviewing the law, time
25 devoted to preparing the return, and time devoted to

1 copying and mailing the return. And the time devoted to
2 actually preparing the return itself, the Form 990 is
3 probably about 22 hours, as I recall. The time to
4 prepare Schedule A, which is a critical schedule, was
5 another 10 hours or so.

6 Q. And those will cover a gigantic variety of
7 organizations?

8 A. That's right. It's a rough average, so some
9 would be more, others would be less.

10 Q. And I asked you to review numerous documents in
11 this case; is that accurate?

12 A. Correct.

13 Q. Have you reviewed -- I'll just show you briefly
14 some e-mails which are Exhibit 669. Just show you that
15 to refresh your recollection. And then I'll let you
16 look at that for a second. And then 670 and that's 671.
17 You are familiar with those?

18 A. Yes, I am.

19 Q. Are these the types of documents that the IRS
20 would use in making a determination as to al-Haramain
21 Ashland should have accounted for that \$150,000 donation
22 on their tax return?

23 A. Correct.

24 Q. Okay. Isn't an IRS auditor or reviewer
25 restricted to the information known to the accountant at

1 the time the return was prepared?

2 A. No. In fact, the contrary is the case. They
3 should be -- they should collect additional information.
4 They should collect information that was not available
5 to the accountant, if they become aware of it.

6 Q. Similarly, the IRS auditor or reviewer, is not
7 restricted to the information known by the taxpayer or
8 organization at the time?

9 A. That is correct.

10 Q. Are the facts that we discussed in the e-mail,
11 and such, sufficient for you to make a determination as
12 to whether the \$150,000 from Mr. El-Fiki should appear
13 on line 1 or line 22 of the al-Haramain Form 990 for the
14 year 2000?

15 A. Yes, they are sufficient.

16 Q. Okay. Should the \$150,000 have been on line 1
17 or line 22?

18 MR. CARDANI: Excuse me, I object. How is he
19 to know the intent of Mr. El-Fiki?

20 MR. MATASAR: That's not the issue. The issue
21 is -- the intent of Mr. El-Fiki is so far no where
22 relevant in the matter.

23 THE COURT: Just a moment. You can ask the
24 question.

25 MR. MATASAR: Okay.

1 BY MR. MATASAR:

2 Q. Should the \$150,000 have been on either line 1
3 or line 22?

4 A. No, it should not.

5 Q. And why is that? Please tell the jury why they
6 should not have been on line 1 or line 22.

7 A. That is because there is a core question in
8 determining whether a transfer of money constitutes
9 income or whether it constitutes something else. And
10 that core question relates to whether the recipient of
11 the income has the ability to control that income or is
12 his relationship that of an agent where his ability to
13 use the money is restricted to the terms of the agency
14 agreement, form of contract, if you will.

15 It's essentially the same analysis that, for
16 example, when you make a deposit in your savings account
17 at a bank, that money does not belong to the bank even
18 though the bank has it. The bank holds it for you,
19 awaiting your decision as to how to spend the money.
20 It's that same analysis.

21 Q. Are there provisions in the Code or rulings or
22 memos within the IRS that supports your analysis that it
23 should not be on lines 1 or 22?

24 A. Yes.

25 Q. Can you briefly describe some of the authority.

1 A. Well, the first authority of which I'm aware is
2 something called Office Decision 119 issued in 1919 by
3 the Internal Revenue Service. And it involves a
4 member -- a religious leader of a congregation who was a
5 member of a religious order who received funds from the
6 congregation to be distributed up -- farther up the
7 church hierarchy. And the ruling says that the monies
8 that are received, that are required to be transmitted
9 on to the parent organization, are not income to the
10 individual religious leader because they are -- he is
11 acting as the agent, not as the principal in that
12 relationship.

13 That principle has been carried through in a
14 series of revenue rulings which are official statements
15 of the IRS about interpretation of tax law. It's
16 appeared in some court decisions, one involving the 7Up
17 company, not involving a charity, but the same principle
18 applies.

19 So it has been part of the tax law since the
20 beginning of the federal income tax. 1919 was an early,
21 very early time, up through the current.

22 Q. Okay. So, Mr. Owens, I want to ask you a
23 question about the reporting times. Now, a 990 is filed
24 at the end of the tax year, December 31st, right, for --
25 for most organizations, including this one?

1 A. It is due to be filed on the 15th day of the
2 fifth month after the close of the tax year. Most
3 organizations have a calendar year tax year. So Form
4 990 for the year 2000, for example, for a calendar year
5 taxpayer would be due May 15, 2001.

6 Q. And what I want to differentiate now is the
7 question of in certain circumstances whether it should
8 appear somewhere else on the return other than line 1 or
9 line 22. And let me give you an example.

10 Let's say that this organization had a tax
11 reporting date, it had a special tax year that ended
12 February 29th of 2000. So you saw the money came into
13 their account before that, on February 25th; it went out
14 of their account on March 9th or 10th. So let's just
15 assume that the tax year was ending February 29th when
16 that money was in that account. In that case, would
17 that \$150,000 shown up -- should it have shown up on the
18 tax return somewhere?

19 A. Assuming it was received as an agent, yes.

20 Q. Okay. And where would it -- would it be on
21 line 1 or line 22?

22 A. No, it would not.

23 Q. Where would it be?

24 A. The money -- the funds would show up as an
25 asset of the organization either as cash or as an other

1 asset, there are two different lines for reporting that
2 sort of thing, with a corresponding liability,
3 offsetting liability.

4 Q. But let's be clear, that if the money went out
5 in the same tax year, it wouldn't -- it needn't be on
6 the return at all anywhere, not line 1, line 22, not as
7 an asset, nowhere on the return?

8 A. It should not be on the return under those
9 circumstances.

10 Q. According to the information that you have
11 reviewed that we discussed, did al-Haramain U.S.A. have
12 a duty to send this \$150,000 to al-Haramain Saudi
13 Arabia?

14 A. Yes, it did.

15 Q. Okay. And explain to the jury why that is.

16 A. That's because the funds were received from the
17 donor pursuant to an agreement with al-Haramain Saudi in
18 the form -- in essence a contractual agreement that
19 the -- there would be a transfer of funds to be used for
20 particular purposes. And the arrangement constituted a
21 duty. And al-Haramain Ashland, al-Haramain U.S., as the
22 agent for receiving those funds, was required under the
23 terms of this contract, if you will, to transmit them to
24 al-Haramain Saudi.

25 Q. If -- Mr. Owens, once this \$150,000 got to

1 al-Haramain U.S.A., and after they got it, they
2 explored, but didn't spend, but they explored various
3 ways of complying with the wishes of the donor, would
4 that change your analysis as far as whether it belongs
5 on line 1 or 22?

6 A. No, it would not.

7 Q. How about if al-Haramain U.S.A. got some sort
8 of instruction from al-Haramain Saudi Arabia to direct
9 the money to a particular recipient, and then they did
10 it, this is just an assumption, if they had done that,
11 would it go on line 1 or line 22?

12 A. If they did transmit the money, it would not go
13 on line 1 or line 22.

14 Q. Even if they did. Okay.

15 A. In fact, the reference I cited, Office Decision
16 119 from 1919, actually contains a line on which it says
17 that if the donor of the funds to the religious leader
18 instructs the religious leader to retain the money and
19 not pay it up to the parent church, it still is not
20 income to the religious leader. So even in the earliest
21 precedent, there was an ability to adjust the
22 instructions.

23 Q. Mr. Owens, if al-Haramain Riyadh gave
24 al-Haramain Ashland thousands of books at zero cost, and
25 al-Haramain U.S. distributed those, should the value of

1 those books appear on the tax return as some sort of
2 contribution?

3 A. Yes. The fair market value should have
4 appeared as a contribution, an in-kind contribution.

5 Q. And the fact that al-Haramain U.S. got them at
6 zero cost or didn't have to pay for them, but they were
7 donated, would that affect whether or not it belonged on
8 line 1?

9 A. No.

10 Q. And if al-Haramain Ashland distributed these
11 books throughout the United States, should that have
12 appeared on line 22 of the return?

13 A. The distribution of the books and the fair
14 market value of those books distributed should have
15 appeared on line 22.

16 Q. Just putting them down on Form 990 as a
17 shipping charge, that's not sufficient?

18 A. Well, that would only be sufficient if the
19 books had no market value.

20 Q. You are familiar with line 57a on the tax
21 return, Form 990?

22 A. Yes, I am.

23 Q. Does an organization have to report the value
24 of a building it owns on line 57a of Form 990?

25 A. Yes.

1 Q. And could we show that, Ms. Cooke. I'm
2 guessing page 3 or 4. I'm not exactly sure. That's the
3 line on the return where it would go; is that correct?

4 A. Correct.

5 Q. Thank you, Ms. Cooke. And what goes on that
6 line? Is it just the basis -- you said the basis of the
7 asset. Is that what needs to go on that line?

8 A. Well, the line asks for the basis. It asks for
9 the depreciation. It asks for basically the value of
10 what might be deducted from the value.

11 Q. Does the Form 990 at any place provide for the
12 mode of purchase or the cash flow that led to the
13 purchase of any building that goes on line 57a?

14 A. It doesn't specifically ask for that
15 information.

16 Q. What is the IRS's purpose in asking for the
17 value of buildings on line 57a of Form 990?

18 A. Well, the IRS wants to know the value of the
19 assets the organization has, the nature of the assets.
20 A building would be one kind of asset.

21 Q. Is the particular amount important to the IRS?

22 A. The specific amount is not important. What
23 would be important would be whether amounts were out of
24 proportion with the other assets and activities of the
25 organization.

1 Q. And you can tell that if there was a large
2 difference, a \$10 million difference, something like
3 that?

4 A. Correct. A building worth \$10 million for an
5 organization that didn't appear to have activities that
6 would involve a building of that size would suggest that
7 perhaps something else was going on.

8 Q. And would an \$80,000 error on a 300 or a
9 \$400,000 building, approximately, would that be
10 important to the IRS?

11 A. That's -- would be trivial.

12 Q. Just one more series of questions, Mr. Owens.
13 How common is it for 501(c)(3) status to be revoked?

14 A. It is rare.

15 Q. Are you familiar with the statistics?

16 A. Generally familiar, yes.

17 Q. About how rare?

18 A. I believe for the year 2000, 27 to 29
19 organizations, 501(c)(3) organizations, lost their tax
20 exempt status out of a filing population of
21 approximately 240,000, not taken into account probably
22 several hundred thousand churches that do not have to
23 file a return.

24 Q. And if your status is revoked, can you reapply?

25 A. Yes.

1 Q. How long is the waiting period, if any?

2 A. There is no particular waiting period unless
3 the revocation was because of political campaign
4 activity, in which case there would be a year of taxable
5 status.

6 MR. MATASAR: Thank you, Mr. Owens. I have no
7 further questions.

8 THE COURT: Cross.

9 CROSS-EXAMINATION

10 BY MR. CARDANI:

11 Q. Good morning, Mr. Owens.

12 A. Good morning.

13 Q. My name is Chris Cardani and I work for the
14 U.S. Attorney's Office. And I just have some questions
15 for you on cross-examination.

16 First, you've given a discount to the defense?

17 A. My rate has been reduced, yes.

18 Q. Okay. So you originally -- you usually charge
19 \$600 an hour?

20 A. \$595, yes.

21 Q. Thank you. And you are charging \$300 an hour
22 for your work in this case?

23 A. Correct.

24 Q. And how many -- does that include the
25 testimony, is it the same rate for testimony?

1 A. Correct.

2 Q. And how many hours have you worked on this
3 case, sir?

4 A. I don't recall off the top of my head, but I've
5 worked a few. I would say probably on the order of
6 maybe 40 hours total. I have associates whose time is
7 also billed at the same reduced rate.

8 Q. And were there associates in this case or just
9 you?

10 A. Yes.

11 Q. Which one?

12 A. Excuse me?

13 Q. Were there associates involved?

14 A. Yes.

15 Q. And do you know how many hours they worked on
16 this?

17 A. I don't have the total figures in my head, but
18 my guess is probably something on the order of 40 to
19 50 hours.

20 Q. Total associate time?

21 A. That would be my best guess at this point, yes.

22 Q. And what about paralegals and other
23 administrative expenses, would that go on top of this or
24 is that included in the rates?

25 A. There were none of those personnel involved.

1 Q. Now, your experience, you talked about you
2 putting 25 years with the Service?

3 A. Correct.

4 Q. And that ended in the year 2000?

5 A. Correct.

6 Q. When you went to work at Caplin & Drysdale?

7 A. Correct.

8 Q. Is it safe to say that your 25 years with the
9 IRS was all spent at headquarters?

10 A. Correct.

11 Q. In Washington, D.C.?

12 A. Correct.

13 Q. And as a lawyer?

14 A. Correct.

15 Q. So you went right from law school to the IRS?

16 A. That's right.

17 Q. Now, you talked about doing some supervising of
18 auditors, if I heard that correctly. But have you been
19 personally involved in rolling up your sleeves and
20 auditing 990s?

21 A. Could you describe what you mean by that?

22 Q. Have you -- well, you know what an auditor
23 does, like a Greg Wooten before he became a supervisor?

24 A. Yes, I do.

25 Q. All right. Have you served in that same

1 capacity with the IRS?

2 A. I have traveled out to field offices where I've
3 had meetings with revenue agents who were developing the
4 questions that they would ask organizations. I've gone
5 through those questions with the revenue agents, helped
6 refine them, helped decide which lines of inquiry to
7 explore, so I have not been out on-site, but I have been
8 in the process of deciding what questions to ask, how to
9 ask them, and assessing the information received.

10 Q. But no personal field experience in a complete
11 audit from start to finish?

12 A. That is correct.

13 Q. Now, I want to understand this notion of agency
14 and how -- if I understand your testimony, you are
15 saying that if a local 501(c)(3) charity acts, in
16 essence, as an agent or a conduit for another
17 organization, then the transactions don't have to be
18 reported on 990; is that a fair statement?

19 A. It depends on the time of the transaction.

20 Q. The time. What do you mean by the time?

21 A. The timing of the transaction, in other words,
22 as I testified, if the receipt of those funds, receipt
23 as an agent and the disbursement as an agent occurs
24 within the same fiscal year, it isn't reported on the
25 Form 990. It is tracked on the books and records of the

1 organization, but not reported on Form 990.

2 If, however, that transaction -- the agency
3 relationship spans more than a year, then there would be
4 an entry on the Form 990.

5 Q. Now, you are making certain assumptions,
6 though, if -- let's stick with it -- if it's within the
7 same year. You're making certain assumptions on agency,
8 and the term earmark has come up. Is that a familiar
9 term to you?

10 A. Yes, it is.

11 Q. Is this what you are talking about on the
12 conditions you're assuming that the local charity
13 doesn't have to report this agency transaction?

14 A. Earmarking is a somewhat diminished form of
15 identifying a particular use of an amount of money. It
16 doesn't necessarily suggest an agency relationship. An
17 agency relationship is where there is no discretion on
18 the part of the agent to vary the funds.

19 Earmarking could be a designation for a
20 particular category of use leaving the recipient with
21 the discretion to select among different uses.

22 Q. But the non-reportability is what I'm focusing
23 on about your testimony. To make it non-reportable, a
24 local 501(c)(3) really has no choice in the matter, they
25 are kind of a conduit for the transaction; is that a

1 fair statement?

2 A. Yes.

3 Q. And so the local charity, 501(c)(3), gets the
4 money, and they really have no choice but to serve as a
5 vehicle to get it overseas?

6 A. They are bound by the terms of the contractual
7 agreement that sets up the agency relationship.

8 Q. So it's really not the local charity's money,
9 it's the foreign entity's money, correct?

10 A. Correct.

11 Q. And so the local guy, local charity, really has
12 no control over the movement of the money?

13 A. The local charity would have control in the
14 sense that they would be charged with maintaining the
15 funds until being transmitted.

16 Q. Sure.

17 A. But they would not have the discretion to vary
18 what to do with those funds.

19 Q. Sure. And your analogy was a bank, we deposit
20 money in our bank, and the bank can't just go out and
21 try to spend our money, we set the restrictions on it?

22 A. Correct.

23 Q. It's our money?

24 A. Correct.

25 Q. Now, you know -- you've studied a lot of the

1 documents in this case. And you know the particulars of
2 what we call our transaction, the 150 that came in from
3 this Egyptian guy, and then what happened after that; is
4 that right?

5 A. Yes, that's right.

6 Q. So you know that when the money came in, it was
7 \$150,000 less a \$15 wire transfer fee?

8 A. Correct.

9 Q. So in a true conduit situation, wouldn't the
10 most efficient way for the local 501(c)(3), if it was a
11 true conduit, just spend another 15 bucks and kick the
12 money over to Saudi Arabia?

13 MR. MATASAR: Objection, beyond the scope as
14 far as --

15 THE COURT: Overruled.

16 MR. MATASAR: -- this witness.

17 THE WITNESS: Could you repeat the question,
18 please.

19 BY MR. CARDANI:

20 Q. Yeah. So you know that it costs \$15 to get the
21 money from London to the United States, right?

22 A. Correct.

23 Q. Now, if it's a true conduit, so if this agency
24 relationship exists, then wouldn't you expect that the
25 most efficient way to achieve these intentions is to

1 spend another \$15 and quickly wire it right back to
2 Saudi Arabia?

3 A. That may not be the most efficient way.
4 Certainly nothing about the conduit relationship
5 requires any particular transmission. In fact, for
6 foreign transmissions, the current Form 990, which has
7 an expanded reporting, specifically asks the question
8 about the means of communication of the funds, whether
9 it's wire transfer, check, cash, what have you. So the
10 IRS would expect to see any form of transmission. There
11 would be no particular form required.

12 Q. It wouldn't be required, but it would -- if
13 you're trying to protect the -- what you say are the
14 intentions of the donor to preserve the principal and
15 get it to its intended purpose, act as this conduit as
16 you say, then wouldn't you want to do it as cheaply as
17 possible?

18 A. The best way to do it is the way the owner of
19 the money wants it done, which in this case would be
20 al-Haramain Saudi, yes, that's -- that would be pursuant
21 to the agreement.

22 Q. But you know -- I'm sorry, you know that you
23 can wire transfer money from Oregon to Saudi Arabia for
24 15, 20 bucks, correct?

25 A. I would assume that's the amount, yes.

1 Q. And there is nothing difficult about that, you
2 just go to the bank and say this is what I want to do?

3 A. Correct.

4 Q. And you know that didn't happen here?

5 A. Correct.

6 Q. And you know further that one of the Saudi
7 Arabian members of al-Haramain, this Mr. al-But'he,
8 proceeded to fly halfway across the world to come get
9 the money, right?

10 A. Yes.

11 Q. And that's not a cheap proposition?

12 A. I would assume it isn't.

13 Q. Several thousand dollars for a plane ticket.

14 A. I've never priced them, but I would assume
15 something on that order.

16 Q. Okay. And you know this Mr. al-But'he was an
17 officer of the local charity here, too? Did you know
18 there was a common membership on both Saudi Arabia and
19 the United States board membership?

20 A. I understand he was a director. I'm not sure
21 whether he was an officer or not.

22 Q. All right. I'll show you some documents later
23 on. So you know that this Mr. al-But'he flew into the
24 United States, and he and Mr. Sedaghaty, the defendant,
25 went to a bank to retrieve this money, correct?

1 A. That's my understanding.

2 Q. And you know that before this happened, that
3 the head of the 501(c)(3), Mr. Sedaghaty, preordered
4 130,000 in American Express traveler's checks, right?

5 A. I understand traveler's checks were ordered,
6 yes.

7 Q. Now, you know that if you are acting as a
8 conduit and you didn't wire transfer the money for \$15,
9 if you are really truly acting according to what you
10 think the intention of the donor is, to get the 150,000
11 to Saudi Arabia, then you would want to get \$150,000 in
12 traveler's checks, not 130,000, right?

13 MR. MATASAR: Objection, Your Honor, beyond the
14 scope and argumentative.

15 THE COURT: Overruled.

16 THE WITNESS: I think the question is whether
17 the owner of the funds, how they -- that owner wanted
18 the transmission to occur.

19 BY MR. CARDANI:

20 Q. Do you know anything in this case that
21 Mr. El-Fiki said I want you to get 130,000 in traveler's
22 checks, not 150,000?

23 A. I don't recall seeing anything like that.

24 Q. All right. And you've seen nothing where this
25 Mr. El-Fiki instructed Saudi Arabia or the United States

1 as to how to break down the transaction to get the
2 \$150,000 to Chechnya, right?

3 A. That's because Mr. El-Fiki would not have been
4 the one to have made those decisions. The money would
5 belong to al-Haramain Saudi. al-Haramain Saudi would
6 have been the one to make the decision about how to
7 transmit it.

8 Q. No. But I thought you said you'd want to
9 comply, as best as possible, with the intentions of the
10 donor in effectuating the transaction. Did I hear that
11 wrong?

12 A. No. The intention of the donor is to give it
13 to al-Haramain Saudi. al-Haramain Saudi, as I
14 indicated, is the owner of assets at that point.

15 Q. So if the donor wanted \$150,000 to go into
16 Chechnya, then al-Haramain had an obligation to do its
17 best job in preserving as much of that principal as it
18 could to achieve the intended purposes, right?

19 A. Which al-Haramain are you referring to?

20 Q. Both.

21 A. al-Haramain Saudi would have had ownership over
22 the funds, and my recollection of the terms of the
23 arrangement with Mr. El-Fiki, gave al-Haramain Saudi the
24 ability to decide who and how the funds would be
25 distributed. So al-Haramain Saudi had discretion,

1 whereas al-Haramain U.S. did not have discretion. So
2 al-Haramain U.S. would have been charged with carrying
3 through and transmitting the money back to al-Haramain
4 Saudi.

5 Q. Okay. So getting back to the transaction, sir,
6 you know 130,000 in American Express was preordered by
7 Mr. Sedaghaty, right --

8 A. Yes.

9 Q. -- from the bank?

10 A. Yes.

11 Q. And did you know that there was a 1 percent fee
12 for that which cost \$1,300 to al-Haramain local, the
13 501(c)(3)?

14 A. I'm aware there is a fee for traveler's checks,
15 yes.

16 Q. Okay. And assume for purposes of this, that it
17 was \$1,300 just to get it broken down like this, okay?

18 A. I'll assume that.

19 Q. So do you think Mr. El-Fiki would be happy
20 about that, that \$1,300 of his donation was coming off
21 the top to do it in this kind of strange way?

22 MR. MATASAR: Objection.

23 THE COURT: Sustained.

24 BY MR. CARDANI:

25 Q. Now, you also know that there was \$20,000 in

1 addition to this, so you get the 130 that went in
2 traveler's checks, right?

3 A. Correct.

4 Q. And then there is another 20,000. Do you know
5 where that \$20,000 went?

6 A. My understanding is it was retained by
7 Mr. Soliman al-But'he.

8 Q. Well, more specifically, you know -- did you
9 see the documents where Mr. Sedaghaty issued a check for
10 the purchase of a cashier's check for Mr. al-But'he?

11 A. Yes.

12 Q. And you know that Mr. al-But'he and
13 Mr. Sedaghaty were the only two people that controlled
14 the money in that bank account, they were the only two
15 signatories; is that right?

16 A. That's correct.

17 Q. So the \$21,000 cashier's check is given to an
18 officer of the local 501(c)(3), Mr. al-But'he?

19 A. Correct.

20 Q. So if you've got the 150, and that's broken
21 up -- that's supposed to go to Chechnya -- and you've
22 got 130 in traveler's checks, and now you've got 21,000
23 being issued, there is a little bit more than 150, isn't
24 there? An extra grand, isn't there?

25 A. Roughly, yes.

1 Q. And do you know that Mr. al-But'he deposited
2 that cashier's check into his own personal bank account
3 in Saudi Arabia when he got home?

4 A. I believe I've seen information to that effect
5 in the file, yes.

6 Q. So if the local 501(c)(3), sir, spent \$1,300 to
7 get the traveler's checks as the fee, and an extra \$1000
8 on top of the 20,000, so it's \$2,300 of the local
9 501(c)(3)'s money was spent to do this strange --
10 this -- excuse me -- this transaction in this manner,
11 wouldn't that be important to report how the 501(c)(3)
12 is using its own money, separate from what you consider
13 this conduit money, it's using its own money to help get
14 this transaction going, doesn't that --

15 MR. MATASAR: Objection, Your Honor, there is
16 no indication whose money --

17 THE COURT: Okay.

18 MR. MATASAR: I'm sorry, assumes facts not in
19 evidence, I guess is what I should say.

20 THE COURT: Sustained.

21 BY MR. CARDANI:

22 Q. Okay. If the local charity --

23 MR. MATASAR: The objection was sustained.

24 BY MR. CARDANI:

25 Q. Let me restate the question. If the local

1 charity used its own money to help the transaction go
2 this way, isn't that important for 990 purposes,
3 reporting purposes?

4 A. If the local charity expended funds for a
5 particular action, that would be reported as an expense
6 on the Form 990.

7 Q. Okay. So if the local charity used some of its
8 own money, separate from this 150 of Mr. El-Fiki's, then
9 that's a reportable transaction on the 990, right?

10 A. Correct.

11 Q. And you know that wasn't done here, right?

12 A. I don't know that.

13 Q. Well, you've spent quite a bit of time
14 reviewing the 990?

15 A. Yes. But there were a number of expenses
16 listed on the Form 990. I don't know what was included
17 behind each of those expenses.

18 Q. Okay. Now, a slightly different subject. When
19 you grant the stamp of approval for a business to act
20 tax exempt, there are obligations imposed on that
21 organization with respect to record keeping; is that
22 right?

23 A. I'm not sure I understand your question,
24 because a business is almost by definition not qualified
25 to be tax exempt as a charity.

1 Q. Well, you know what a determination letter, of
2 course, is, right?

3 A. Yes, I do.

4 Q. So when the IRS reviews an application, a 1023,
5 and after all the back and forth says, okay, you are now
6 tax exempt, there is a determination letter that's
7 issued?

8 A. Correct.

9 Q. And you've seen the determination letter in
10 this case, have you not?

11 A. Correct.

12 Q. I'd like to bring up -- incidentally, the tax
13 exempt status of al-Haramain as granted by IRS was not
14 as a church, was it?

15 A. That's correct, it was not.

16 Q. It was a public charity, right?

17 A. Correct.

18 Q. And so once granted, there was a requirement
19 that al-Haramain file 990s for any year that its
20 receipts exceeded \$25,000; is that right?

21 A. Correct.

22 Q. Now, if we could go to IRS-4, and off to your
23 right, sir, if you could look on the screen. This is
24 the determination letter issued by the IRS in this case.
25 Now, at the bottom of page 3, it talks about record

1 keeping requirements, does it not?

2 A. Yes, it does.

3 Q. And it's cut off here, but if you need a better
4 copy of this that explains the whole thing, I'll make
5 arrangements for you. But "to assure your continued
6 exemption," the letter says, "you should keep records to
7 show the funds are only spent for those purposes;" is
8 that right?

9 A. Correct.

10 Q. And it talks about how when you give to another
11 tax exempt organization, there's certain types of record
12 keeping, but if we spill over to the next page, page 4,
13 if the recipient organization is not exempt under
14 501(c)(3), you must have evidence that the funds will
15 remain dedicated -- we just had an electronic burp,
16 Judge.

17 THE COURT: None of my machines are working
18 today.

19 MR. CARDANI: I can go back to old school, if
20 you want.

21 THE COURT: Let's do it the old-fashioned way.

22 MR. MATASAR: Does the court reporter need the
23 electricity? You're okay. Your machine is working?

24 THE REPORTER: Yes.

25 MR. CARDANI: Am I free to go ahead?

1 THE COURT: Yes, just speak up.

2 BY MR. CARDANI:

3 Q. All right. Mr. Owens, I have a letter here.
4 And if you -- I better speak quickly while it's up here
5 before it disappears. Do you see that, Mr. Owens?

6 A. Yes, I do.

7 Q. I'm going to speak up, because it doesn't look
8 like we have mikes. But if -- what this determination
9 letter is saying to al-Haramain is, if you are
10 distributing money to another organization that is not
11 tax exempt, there are even greater record-keeping
12 requirements; is that right?

13 A. Yes, that's correct.

14 Q. And that said a minute ago, okay -- it says
15 "you must have evidence that the funds will remain
16 dedicated to the required purposes, and that the
17 recipient will use the funds for those purposes." Are
18 you familiar with that language?

19 A. Yes, I am.

20 Q. Okay. So what we're saying here, and the
21 reality of this is, what we want to know is if you're
22 sending money to a non-501(c)(3), you gotta keep really
23 good records, right?

24 A. Yes.

25 Q. And the reason is because TEGE, your old shop,

1 EO, Exempt Organizations, is on the front lines of
2 monitoring charities to determine whether they're
3 spending their money consistent with public policy,
4 correct?

5 A. Consistent with the Internal Revenue Code.

6 Q. Sure. But if somebody applies as a public
7 charity, as a religious charity, for example, like here,
8 it's IRS's job, your old shop's job, to monitor the
9 charities to make sure they are doing what they say they
10 are doing, correct?

11 A. Correct.

12 Q. And the primary vehicle that you use to do
13 that, that IRS uses to do that, is this Form 990 that
14 we've heard so much about, right?

15 A. Correct.

16 Q. And with respect to foreign distributions, the
17 IRS is particularly concerned about record-keeping
18 requirements being maintained by local charities, fair
19 statement?

20 A. Fair statement.

21 Q. And what you would want -- what you would
22 expect to make sure that it's doing what it's supposed
23 to do, before sending money overseas, is it a fair
24 statement that you would expect as IRS the local
25 organization to do a little bit of an investigation to

1 make sure that the funds are going for their intended
2 purposes?

3 A. Correct, I would.

4 Q. We would call that due diligence, would we not?

5 A. Yes.

6 Q. And you'd expect the charity -- the local
7 charity to make some investigation or determination in
8 advance of sending the money as to who would get it,
9 what would be done with the money; is that right?

10 A. That's generally what you would expect to see,
11 yes.

12 Q. And then you would expect the local charity
13 here to do some sort of tracking or record keeping or
14 reporting back to the actual use made of the money,
15 right?

16 A. Unless an exception applied.

17 Q. But in general that's -- the IRS's expectations
18 with respect to foreign money, that there be
19 record-keeping --

20 A. The IRS has published guidance in Revenue
21 Procedure 92-94, which is described in the Form 990
22 instructions, that sets out something called an
23 equivalency determination where as part of that due
24 diligence process on the front end, the U.S. charity
25 collects information, including an affidavit from the

1 foreign organization, that would allow the U.S. charity
2 to make a good-faith determination that the foreign
3 entity was equivalent of a U.S. charity for purposes of
4 transmitting money, then the U.S. charity does not have
5 to have the back-end tracking that you described.

6 The back-end tracking is only required where no
7 equivalence determination is done on the front end.

8 Q. Now, it looks like we got a mike. You've
9 testified in other cases like this around the country,
10 have you not?

11 A. I have testified in court on -- this is my
12 fourth occasion.

13 Q. All right. And one of them included a case in
14 Boston?

15 A. Correct.

16 Q. And during that trial, I have a copy of the
17 transcript if you want to see it, but weren't you asked,
18 if a domestic charity sends money --

19 MR. MATASAR: May we see a transcript,
20 Mr. Cardani? Do you have one for us?

21 MR. CARDANI: Uh-huh. (Document tendered).
22 BY MR. CARDANI:

23 Q. Repeat the question. You were asked: "If a
24 domestic charity sends money overseas for its charitable
25 purposes, what are the requirements of the IRS with

1 regard to due diligence in ensuring that the money is
2 spent for charitable purposes?"

3 Do you remember that question?

4 A. Yes, I do.

5 Q. Was your answer: "The IRS would expect the
6 charity to make some investigation or determination in
7 advance of sending the money as to who would receive the
8 money and what would be done with the money."

9 Did you say that?

10 A. That's my recollection.

11 Q. And did you go on to say: "And they would
12 expect some sort of tracking or record keeping or
13 reporting back as to the actual use made of the money"?
14 Did you say that?

15 A. I believe that's what I said.

16 Q. Now, with respect to that type of record
17 keeping -- do we have use of our machines? Could we
18 bring up AHIF-2. Is this among the documents, sir, that
19 you looked at prior to your testimony today?

20 A. Yes, it is.

21 Q. And you know there is another one very much
22 like it, AHIF-3. Did you also look at that one?

23 A. Yes, I did.

24 Q. Are these the type of investigative efforts and
25 record keeping that you referred to in your Boston

1 testimony that would be sufficient to the IRS?

2 A. No.

3 Q. Why not?

4 A. Because these records are not records relating
5 to an U.S. organization's funds being transmitted
6 overseas. These records actually appear to be, to me,
7 just, in essence, a receipt for accepting money, moving
8 it from one party to the other. They really don't
9 describe the end use of the funds, so that they are more
10 of an intermediary documentation of where the funds are.

11 Q. So would you go so far as to say that they are
12 basically irrelevant to the record keeping -- whether
13 the record -- maintaining these record-keeping
14 requirements?

15 A. They are relevant only insofar as they show who
16 had the money at one particular point in time.

17 Q. All right. I want you to assume something for
18 me for this next set of questions. If the IRS had
19 audited al-Haramain and asked them to produce records
20 relating to this Chechnya transaction, and they gave
21 you -- they gave IRS two receipts, these two receipts,
22 think IRS would have any problems with these things?

23 A. I think the IRS would wonder what they are.
24 They are -- they simply show a transmission of money.
25 They don't show anything much beyond that. So they seem

1 to naturally -- would have led a revenue agent to ask
2 more questions. They are simply documents that are, as
3 I said, intermediaries in the transmission.

4 Q. Thank you. And you would expect a Revenue
5 agent to ask more questions if the tax exempt
6 organization said this receipt reports the transmission
7 of 150,000 that you are asking about so here you go, and
8 you saw not one but two of these, and they have
9 different amounts, different signatures, that would
10 raise some red flags, would it not?

11 A. It certainly would trigger questions. Whether
12 it would be red flags or not would depend on the other
13 facts surrounding these particular documents.

14 Q. And if you did that additional investigation or
15 as one of your subordinates in the field, like
16 Mr. Wooten, did this additional investigation and found
17 out that those figures are incorrect, that \$188,000
18 never left the local charity's account, in other words,
19 that this is false information, would that cause IRS
20 some concern?

21 A. It certainly would be grounds to ask for an
22 explanation.

23 Q. Now, you are familiar with fraud during an
24 audit occasionally when you select a 501(c)(3)
25 organization for an audit and an audit occurs, if the

1 exempt organization provides false evidence to the IRS,
2 that's a big problem, is it not?

3 A. Knowing/willful provision of false information
4 is a big problem, yes.

5 Q. And in addition to things like disbanding or
6 revoking the charity, there are other options available
7 for sanctions to IRS, are there not?

8 A. Yes.

9 Q. Fines?

10 A. Penalties, yes.

11 Q. Letter of reprimand, if it's not that big a
12 deal?

13 A. Those are called no change with advisory
14 letters, but that's essentially what it is, a warning.

15 Q. Okay. But if you -- excuse me.

16 A. A warning.

17 Q. But if you ratchet it up a little bit and you
18 determine that there is actual fraud during the audit
19 process by providing false evidence, could you have
20 civil fraud sanctions?

21 A. You could.

22 Q. And could you not refer it to the criminal
23 house of IRS?

24 A. Correct.

25 Q. And that would probably happen, would it not,

1 if you are auditing a tax exempt and they provided false
2 information to you?

3 A. Well, the decision to make the referral is
4 based on that sort of finding, but there is also a
5 requirement that there be a threshold amount of tax due,
6 that there be some tax effect. And that's laid out in a
7 recent report that the Treasury Inspector General for
8 tax administration released on Exempt Organizations'
9 criminal cases back on July 2nd, I think, of this year.
10 And that report by the Inspector General outlines in a
11 couple of paragraphs his process and makes it clear that
12 there is a threshold, in other words, not every act in
13 which there is some sort of understatement of tax is
14 going to necessarily be accepted for criminal
15 investigation, that there are threshold and requirements
16 and that --

17 Q. Okay.

18 A. -- and that Exempt Organizations' criminal
19 cases are handled under special procedures, that is the
20 decisions to accept or to proceed are made by higher
21 officials than would be the case in a normal income tax
22 investigation.

23 Q. Mr. Owens, you know that those thresholds can
24 be waived when you find that an exempt organization is
25 committing fraud during the audit process, do you not?

1 A. Correct. I was speaking in terms of the
2 general procedures. Of course there are always special
3 cases.

4 Q. Now, in addition -- we talked about TEGE being
5 the front line for policing charities, right? That's
6 the main mission of TEGE to -- not police, but monitor
7 charities.

8 A. To administer the tax laws applicable to tax
9 exempt organizations. It's much broader than just
10 charities.

11 Q. And you know that there are other laws on the
12 radar screen -- during your 25 years with the IRS, you
13 know that there are several other laws that come into
14 play if you find that a tax exempt organization is
15 engaged in fraudulent activity, right?

16 A. There could very well be, yes.

17 Q. And one of the biggies is the crime of money
18 laundering; is that right?

19 A. Correct.

20 Q. And isn't money laundering when an organization
21 takes money of questionable origin, and essentially
22 attempts to put it into a bank account, and masquerade
23 it, create a paper trail to make it look as though it's
24 legitimate money; is that your understanding of money
25 laundering?

1 A. That's my general understanding, yes.

2 Q. And so if IRS gets wind -- let's say that there
3 is a tip from the public that one of your 501(c)(3)
4 organizations is engaged in money laundering, that would
5 be pretty significant to you in achieving your mission;
6 is that right?

7 A. That would be an issue that would need to be
8 investigated, in my view.

9 Q. And you can refer that to other components of
10 the federal government if you've got some questions,
11 FBI?

12 A. No, you can't, because of Section 6103, the
13 privacy rule in the Internal Revenue Code precludes the
14 sharing of taxpayer information with other government
15 agencies, unless they are grand juries or things of that
16 nature and duly authorized. But the Exempt
17 Organizations Division did not have the authority, and,
18 in fact, it would have been sanctioned, the individuals
19 would have been terminated, if they had disclosed tax-
20 payer information to other government agencies.

21 Q. Okay. I'm not talking about that. I'm talking
22 about when you decide that there may be criminal
23 activity, when you're doing an audit or looking at the
24 activities of a tax exempt organization, or you receive
25 information from the public that the charity may be

1 involved in criminal activity, there are ways, are there
2 not, to get that information to the agencies that would
3 investigate that?

4 A. That would not have been my function, so I'm
5 not positive of the precise steps. All I know is there
6 is a privacy rule in the Internal Revenue Code that
7 severely limits the coordination with other government
8 agencies.

9 Q. But you've got criminal investigation as part
10 of the umbrella of IRS? Surely you can get information
11 to them of this sort?

12 A. You make an official referral, yes.

13 Q. Okay. And then controls are put on so the
14 audits are discontinued. But once the referral is made
15 to criminal, then IRS can continue to look into that,
16 right?

17 A. Excuse me, I'm not sure I understood it.

18 Q. You're saying that there are penalties and
19 restrictions on the use of taxpayer information in
20 sharing that, this 6103?

21 A. With other agencies, yes.

22 Q. Okay. But doesn't apply to the criminal side
23 of IRS, you can give them information like this, right?

24 A. That's right. It's part of the same agency.

25 Q. Okay. And then once IRS CI is involved,

1 Criminal Investigation, they have the ability to invite
2 in other agencies, like the FBI, as long as certain
3 requirements, paperwork is filled out with the courts on
4 information sharing of taxpayer information, right?

5 A. I believe that's the case, yes.

6 Q. So I want to give you a hypothetical. You
7 talked about this agency relationship and whether the
8 transaction needs to be reported to the IRS. I want to
9 give you a hypothetical that has nothing to do with the
10 facts of this case, but I want to ask you about it,
11 okay?

12 A. Okay.

13 Q. Assume that information came to you that one of
14 the charities received drug money, cash, from a drug
15 dealer, and they put it in the 501(c)(3)'s bank account,
16 and then transferred it out of the country, and they did
17 this to hide the fact that it was drug money, okay?

18 A. I understand your hypothetical so far, yes.

19 Q. And that information came to you, IRS, that
20 would be of concern, would it not?

21 A. Yes, it would.

22 Q. And what would your expectations be with
23 respect to the 501(c)(3) in a situation like that,
24 record keeping, reporting, would you expect the
25 501(c)(3) to come clean and to tell the IRS about it?

1 A. Would I expect that to happen?

2 Q. Yes.

3 A. Well, I would hope that it would happen. If,
4 indeed, it's a criminal conspiracy, I would not expect
5 it to happen.

6 Q. You mean isn't the point that one of the big
7 things about charities is you want them to be
8 transparent in their activities; is that a fair
9 statement?

10 A. I'm not sure what "transparent" means, but I
11 think in the common parlance, yes.

12 Q. Okay. 990s are publicly available, are they
13 not?

14 A. Correct.

15 Q. They go out to the world, so they're -- you can
16 go onto the computer right now and pull up a charity's
17 990?

18 A. Correct.

19 Q. And the reason for that is that you want these
20 organizations to be forthcoming, that's what I mean by
21 transparent in their financial activities, right?

22 A. Well, the reason for that is the charities are
23 required to make copies of their Form 990 available to
24 the public to anyone who asks, that's the reason.

25 Q. And -- well, one of the reasons for that is so

1 donors can decide whether a particular charity is one
2 that they would want to give their money to, right?

3 A. That is the supposition that the IRS provides
4 on the Form 990 instructions, yes.

5 Q. Okay. So if a charity is engaged in sending
6 money overseas to fund the mujahideen, whether it's for
7 blankets or bombs, you'd expect the 501(c)(3)
8 organization to tell donors about that, wouldn't you?

9 A. I would expect the questions on a Form 990 that
10 deal with grant making to be responded in a complete and
11 candid way, which would include information about the
12 dissemination of the funds, the geographic region of the
13 world, the recipient organization. Current Form 990
14 asks for the means of transmission of funds, that sort
15 of information.

16 Q. Well, haven't you -- when you were still with
17 the IRS, you gave a few speeches in your career?

18 A. I gave a few, yes.

19 Q. I'm looking at something that's reported by a
20 group called Quality 990, Improve IRS Form 990
21 Reporting. Are you familiar with that organization?

22 A. I think it's an activity, not a separate
23 organization. At least that's my recollection. It's
24 been a while since that was extant.

25 Q. Okay. I want to see if you remember a speech

1 you gave way back in 1999. And I have got some
2 information here if you want to see it.

3 A. I may need to see it.

4 Q. Okay. You want to see it now or you want me to
5 ask about it?

6 A. Why don't you ask me about it and I may recall,
7 but I give a lot of speeches a year, so.

8 Q. All right. Let me see if this is the type of
9 speech you would have given back then. The title of
10 this is IRS Warns Nonprofits to Complete Form 990
11 Accurately. "In a recent speech, Marcus S. Owens, IRS
12 Exempt Organizations Division Director, said it is
13 important that tax exempt organizations fill out their
14 Form 990 information returns completely and accurately."
15 Does that sound like something you'd say?

16 A. It certainly does.

17 Q. All right. "Owens said that the visibility" --
18 MR. MATASAR: I'm going to object, Your Honor.
19 This is reading a press release. This is not the
20 speech.

21 MR. CARDANI: It's not a -- it's a report of
22 what he said. And if he didn't say, he can say it.

23 THE COURT: Yeah. You can use it to refresh
24 his recollection.

25 BY MR. CARDANI:

1 Q. Do you want to see it?

2 A. So far it sounds like something I would have
3 said.

4 Q. Okay. You just -- I've got a copy of it here.
5 If you want to see, just let me know.

6 Going on, "Owens said that the visibility of
7 the form will increase with widespread use of the
8 Internet and efforts of the IRS to put all Forms 990 on
9 a CD ROM. As a result, organizations that put vague and
10 general information on their returns could provide
11 fodder to their critics, competitors, and investigative
12 reports, he warned. These forms are important documents
13 to a number of donors, researchers and watchdog
14 agencies."

15 Does that sound like something you would have
16 said when you were still with IRS?

17 A. Certainly does.

18 Q. And what's going on there, once again, you want
19 this transparency, if you want to be tax exempt, you
20 gotta tell people, including donors and the IRS, what
21 you are doing with your money; fair statement?

22 A. I said I was looking for accuracy. I said the
23 rest of the world may be looking for transparency.

24 Q. I'm sorry, did you --

25 A. I said I would be -- I said in the speech, as I

1 recall, and as you read, that I was looking for
2 accuracy, and that donors and others, users of the form,
3 might be looking for transparency.

4 Q. Now, have you also said in the past that in
5 those cases where false statements are made
6 deliberately, and we're talking about a 990, the IRS
7 will often pursue the broader investigation because
8 there is probably a heck of a lot more under the rock;
9 did you say that?

10 A. I could very well have said that. I've
11 certainly said things like it. I don't remember the
12 "under the rock" quote, but it sounds like a good one.

13 Q. Okay. And I've got that article, too, if you
14 want to take a look at it. That was in a *Roanoke Times*
15 just this year, June of 2010. Do you remember talking
16 about a Navy veterans' investigation?

17 A. Oh, yes, yes, I do. I recall that.

18 Q. Okay. Now, wasn't the issue there that there
19 was an allegation that an organization that was
20 supposedly raising money for Navy veterans, a 501(c)(3),
21 was actually distributing some of its money for improper
22 purposes?

23 A. That's my recollection, yes.

24 Q. It was only a few thousand bucks, right?

25 A. I don't remember the exact amounts. I do

1 recall there were allegations of high living and
2 excessive compensation, but I don't remember the actual
3 dollar amounts.

4 Q. But what you were saying about under the rock,
5 correct me if I'm wrong, but what you're saying is if an
6 organization was doing something improper, even though
7 it's just -- with just a little bit of its money, the
8 IRS wants to take a look at it from a broader
9 perspective because there may be a heck of a lot more
10 going on as an indicator by that diversion; is that what
11 you meant?

12 A. That's roughly what I meant, yes.

13 Q. And you also said that "knowingly making a
14 false statement on a tax form submitted to the
15 government is a criminal offense," right?

16 A. I may very well have said that.

17 Q. Well, and it is?

18 A. It is. It's a true fact.

19 Q. Okay. 990s are filed under penalties of
20 perjury?

21 A. Correct.

22 Q. And just to get something straight, regardless
23 of whether this agency thing that you're talking about
24 occurred, if a tax exempt organization makes the
25 decision to report the transaction anyways, they can't

1 lie about it in a 990, can they?

2 A. They have to report in a true and complete way.

3 Q. Okay. So even if a -- some passthrough or
4 earmark or agency thing occurs, like technically looking
5 back on it ten years later, you are saying, well, maybe
6 they didn't have to report that, well, if, in fact, they
7 did, they can't lie about it on a 990, can they?

8 A. If they reported it on a Form 990, it should
9 have been accurately -- it should have been what they
10 believed to be accurate at that time.

11 Q. So regardless of a ten-year-later decision on
12 whether it's supposed to be reported or not, the fact of
13 the matter is if it's on the 990 as filed by the exempt
14 organization, they have to be proper in their reporting
15 with the IRS, right?

16 A. They have to be as -- they have to be as proper
17 as they can be. And by that I mean that they have to
18 make a concerned effort to report accurately.

19 Q. Now, we've been -- there's been some discussion
20 about a change in 990; are you aware of that?

21 A. I'm aware of that, yes.

22 Q. What year was that?

23 A. Well, the 990 changes each year. The most
24 dramatic change occurred between 2007 and 2008.

25 Q. Okay. But wasn't there some proposed changes

1 in 2002 as well?

2 A. There were proposed changes each year, yes.

3 Q. Okay. And Mr. Matasar brought this up with a
4 prior witness, but one of the reasons that the 990 was
5 proposed to be changed was because of this issue of
6 foreign grants, money being sent overseas; are you aware
7 of that?

8 A. Yes, I'm aware of that announcement, yes.

9 Q. And that the announcement said that since the
10 events of September 11, 2001, concern has been expressed
11 that purportedly charitable organizations may be
12 transferring funds outside the United States to
13 organizations or individuals suspected of supporting
14 terrorist activities, right?

15 A. That's what I understand the announcement said,
16 yes.

17 Q. And you know our filing here was in October of
18 2001?

19 A. Correct.

20 Q. And you know that under this foreign grant
21 section, one of the hot button issues was line 22?

22 A. The foreign grant section of the announcement?

23 Q. Yes.

24 A. Yes.

25 Q. And they wanted public comment -- IRS did -- on

1 addressing what further steps, if any --

2 MR. MATASAR: Objection, Your Honor. This is
3 argument. It's not really asking a question to the
4 witness.

5 THE COURT: I didn't hear the question.

6 BY MR. CARDANI:

7 Q. Did the IRS ask for comment regarding changes
8 of the form to help the Service to determine how to take
9 more effectively, and identify on Forms 990,
10 transactions that present a risk of a diversion in
11 charitable funds?

12 THE COURT: Overruled.

13 THE WITNESS: That was the essence of the
14 announcement. It asked for suggestions on changes to
15 the Form 990.

16 BY MR. CARDANI:

17 Q. Because of a concern about so-called charities
18 diverting money for terrorist activity?

19 A. That is what the announcement said, yes.

20 Q. And the IRS was thinking about making a few
21 changes to make sure they did as good a job as they
22 could in determining whether that was happening?

23 A. Correct.

24 Q. Now, could we go to IRS-3, page 3, please.

25 This is one of the forms, Mr. Owens, that you reviewed

1 prior to testifying today?

2 A. Correct.

3 Q. And do we see -- in number 4, do we see Soliman
4 al-But'he listed as an officer, director, or trustee of
5 al-Haramain here in the United States?

6 A. Yes, he is.

7 Q. Okay. And this is a 1023 so --

8 A. Correct.

9 Q. All right. Now, if we could pull up BOA-8.
10 You've seen this check, too?

11 A. Yes, I have.

12 Q. You know it came out of the al-Haramain bank
13 account here in Oregon?

14 A. That's my understanding, yes.

15 Q. And it was made payable to the Bank of America
16 for a cashier's check. And it's signed by
17 Mr. Sedaghaty. Are you aware of that?

18 A. Yes, I am.

19 Q. And in the notations section, it says for
20 Soliman?

21 A. Yes, it does.

22 Q. And you know -- you've seen other records that
23 this led to a cashier's check, came out of the El-Fiki
24 money, al-But'he takes it home, reports nothing to
25 customs on the way out about any of this money, and then

1 he deposited this cashier's check into his own personal
2 account, you know that, right?

3 A. That's my understanding of events, yes.

4 Q. Now, if a local 501(c)(3) makes a payment to
5 its officers, doesn't that have to get reported on the
6 990?

7 A. It depends on the nature of the payment.

8 Q. Okay. If we could go to IRS-1, line 25. Line
9 25 asks about compensation of officers, does it not?

10 A. Yes, it does.

11 Q. If this payment, this \$21,000, was a payment to
12 an officer for compensation, wouldn't you expect it to
13 be here?

14 A. If it was payment for compensation, I would
15 expect it to be reported there, yes.

16 Q. And Schedule A, you mentioned that -- if I
17 heard your testimony correctly -- Schedule A is a very
18 important schedule on a 990?

19 A. Correct.

20 Q. If we could go to page 2, questions 2d, as in
21 David, and 2e, during the year has the organization --
22 up top here -- either directly or indirectly engaged in
23 any of the following acts with any of its trustees,
24 directors, officers, so on and so forth, with an
25 individual -- with -- or with any taxable organization

1 with which any such person is affiliated as an officer,
2 director, and so on; and then d says payment of
3 compensation or reimbursement of expenses if more than
4 1,000, and the answer is no, right?

5 A. That is correct.

6 Q. And if this was a payment to Mr. al-But'he for
7 compensation or payment or reimbursement of expenses,
8 then you would expect it to be reported here, would you
9 not?

10 A. If it was a payment by the organization filing
11 a Form 990, yes.

12 Q. And likewise, e there, was a transfer of any
13 part of its income or assets to an officer, it goes here
14 as well, right?

15 A. Correct.

16 Q. And it wasn't done here. Now, you mentioned
17 line 57 of the building accounts, and if I could
18 summarize your testimony, you said in here it would be
19 kind of an immaterial error; did I get that right?

20 A. I used the word "trivial."

21 Q. Trivial. Okay. Let me give you a
22 hypothetical. If an organization -- a 501(c)(3)
23 organization gets a six figure distribution, and
24 information came to you that the tax exempt engaged in
25 an attempt to coverup a foreign distribution by making

1 it appear as though the bulk of the money went into the
2 purchase of a building on line 57, if that information
3 came to you, you'd care about line 57, wouldn't you?

4 A. I'd care about all aspects of the transaction.

5 Q. I'm sorry?

6 A. I said I would care about all aspects. Part of
7 the transaction that would be most, I think, of interest
8 to the IRS, would be the part where you describe there
9 being an effort to disguise the funds. The purchase of
10 a building is an ordinary transaction that thousands of
11 charities enter into all the time.

12 Q. And what I'm saying is, in and of itself, line
13 57 might not that be a -- be of big a deal, but if it
14 was part of an attempt to disguise a foreign transaction
15 as though it went into a building, then that line 57 may
16 be a very important part of an IRS inquiry, fair
17 statement?

18 A. Well, except line 57 asks for the value of the
19 property, the basis, it doesn't ask for transactional
20 information about it.

21 Q. No. But if you learned that the organization
22 had increased the basis of a building, in other words,
23 they made it look like they spent more money to buy the
24 building than they really did, and this was an effort to
25 masquerade a foreign transaction, line 57 would be very

1 important at that point?

2 A. Line 57 is where that inflated basis figure
3 would show, yes.

4 Q. And it would be an important part of an IRS
5 inquiry if those facts were true?

6 A. Correct.

7 Q. A couple of other areas, Mr. Owens, and then
8 I'll be done. You know that the word Chechnya is
9 mentioned nowhere in the 990 that's so important in this
10 case, right?

11 A. I don't recall seeing it, no.

12 Q. And if an organization is intentionally keeping
13 evidence or information about a foreign transaction off
14 its the 990, you would want to know about that, IRS,
15 right?

16 A. The foreign transactions of all kinds are what
17 are reported basically on the Form 990.

18 Q. But if they are not, what I'm saying is if one
19 occurred and it didn't appear anywhere on the 990, that
20 would be significant to the IRS?

21 A. If it was the kind of transaction that should
22 be reported and it was not, it would be significant,
23 yes.

24 Q. And it would be significant potentially to
25 donors thinking about whether they want to give money to

1 an organization or not, right?

2 A. It might, it might.

3 Q. Not to be facetious, but is the Chechen
4 mujahideen a 501(c)(3) organization?

5 A. Not to my knowledge.

6 Q. Okay. And is al-Haramain Saudi Arabia a
7 501(c)(3) organization?

8 A. Not to my knowledge.

9 Q. Have you gone on record, sir, as recently as
10 2009 as taking the position that IRS Exempt
11 Organizations is not being given enough money to do its
12 job in monitoring charities?

13 A. I've been pretty consistent with that, not just
14 in 2009.

15 Q. Yes. You've written quite a bit about this?

16 A. Yes.

17 Q. Okay. And haven't you also said that the IRS
18 can't do enough audits to catch problem charities?

19 A. That certainly sounds like something I said,
20 yes.

21 Q. And there is a disconnect between IRS's
22 national and local offices?

23 A. Also sounds like something I would have said.

24 Q. Now, you said in your testimony with
25 Mr. Matasar that revocations of charities are -- did you

1 say exceedingly rare or something like that?

2 A. Yes, I did.

3 Q. But lesser forms of activity by the IRS are far
4 more common, are they not?

5 A. You mean lesser forms of action that has some
6 adverse aspect to it?

7 Q. Yes.

8 A. Yes.

9 Q. Audits?

10 A. Well, audits occur at the rate of probably
11 between 1500 and 2000 or so audits a year. That's not
12 itself a sanction, other than the costs you have to
13 incur to pay lawyers to represent you.

14 Q. All right. But what I'm getting at is, while
15 revocations may be rare, there are all kinds of lesser
16 sanctions that are far more regularly imposed by the IRS
17 on exempt organizations; is that right?

18 A. There are certainly a wide variety of
19 sanctions. How common they are being applied is
20 difficult to learn from the IRS's databases, but I would
21 say it's more common. How much more common, I can't
22 say.

23 Q. Okay. And you know that there has been a
24 problem in this country with charities diverting money
25 to fund acts of violence, right?

1 A. That's certainly what the Department of Justice
2 and the Treasury Department have been saying. However,
3 I don't recall that there has been much provided in the
4 way of specific detail about that.

5 Q. Well --

6 A. In other words, how many.

7 Q. Okay. But it was so -- it was of such moment
8 to the IRS, that they had proposed changing the 990
9 because of that very issue, right?

10 A. They certainly proposed it, yes.

11 Q. And it was changed?

12 A. It was eventually changed, yes.

13 Q. And to help determine whether charities are
14 diverting money that they claim are going for
15 humanitarian purposes but are truly going to fund
16 mujahideen for things like weaponry and all, the IRS
17 would want to know about that -- let me back up. If a
18 501(c)(3) is sending money overseas for any purpose, and
19 the IRS learns that it's not reported in a 990, we've
20 already agreed that that would be significant to the IRS
21 to want to know more about that?

22 A. U.S. charity sending its money overseas, yes.

23 Q. And whether it's for buying blankets for
24 refugees, or buying blankets for fighters, or for buying
25 bullets for fighters, you would want to know about that,

1 correct?

2 A. The IRS would want to know about it, yes.

3 Q. And the primary way the IRS gets its
4 information from charities as to what it's doing is
5 through the 990, right?

6 A. Correct.

7 Q. And so if the organization decides not to
8 report its distribution overseas, never say anything
9 about it, then how would the IRS even know about it?

10 A. If it's not reported, the IRS would not know
11 about it unless information came from some other source.

12 Q. And if it did, you'd audit that organization?

13 A. It certainly would be a factor in deciding
14 whether to do an audit. The audit decision would depend
15 on a number of other factors as well.

16 MR. CARDANI: If I may have a moment.

17 (Discussion held off the record.)

18 MR. CARDANI: Mr. Owens, that's all I have.

19 Thank you, sir.

20 THE COURT: Redirect.

21 REDIRECT EXAMINATION

22 BY MR. MATASAR:

23 Q. Mr. Owens, Mr. Cardani asked you about an audit
24 of al-Haramain U.S. Was there an audit in this case?

25 A. I understand there was no audit conducted, no

1 civil audit.

2 Q. Indeed, there can't be an audit when there's a
3 criminal case going on?

4 A. It's extremely rare to have that happen, yes.

5 Q. Are you aware of any evidence that those two
6 receipts that are AHIF-2 and 3 were provided to the IRS
7 in any sort of audit?

8 A. I'm not aware of that, no.

9 Q. Mr. Cardani asked you about money laundering.
10 You've read the indictment in this case?

11 A. Yes, I did.

12 Q. Was there a charge of money laundering?

13 A. I did not see one.

14 Q. In fact, what does the indictment allege about
15 the El-Fiki donation to al-Haramain Saudi Arabia, if you
16 recall?

17 A. I don't recall specifically what the indictment
18 alleged about that particular donation.

19 Q. Do you recall that it said that the money went
20 from El-Fiki as Zakat to al-Haramain Riyadh?

21 A. I certainly saw references like that, yes.

22 Q. Now, the IRS would want to know a lot of things
23 in a sort of a big brother or a universal world where
24 the government knows everything, but the answers it
25 requires to specific questions are limited; is that fair

1 to say? It only asks that the organization provide
2 certain answers?

3 A. That's correct.

4 Q. You've testified that al-Haramain U.S.A. was
5 obligated to send the money to al-Haramain Saudi Arabia,
6 this \$150,000?

7 A. Yes.

8 Q. Now, this due diligence that Mr. Cardani was
9 asking you about concerning the use of money received,
10 does it apply in this case, given the e-mails that you
11 saw in which all the contact was with Saudi Arabia by
12 Mr. El-Fiki, and the language about the accounts, is
13 there a due diligence requirement or need it just be
14 sent to the parent or the Saudi Arabian organization?

15 A. The due diligence requirement doesn't apply,
16 because the funds involved were not the funds of
17 al-Haramain U.S.A. They were funds that they had
18 received as an agent for the third party. So the due
19 diligence only applies when the U.S. charity is
20 distributing its own money.

21 Q. Are you aware that al-Haramain Saudi Arabia has
22 a lot of money?

23 A. I'm aware in a very general sense, yes.

24 Q. Well, you know they gave hundreds and hundreds
25 of thousands of dollars to al-Haramain United States or

1 Ashland?

2 A. Yes, I'm aware of that.

3 Q. And do you know whether or not they
4 instructed -- whether or not al-Haramain Saudi Arabia
5 instructed Soliman al-But'he to use traveler's checks in
6 carrying the money back to al-Haramain Saudi Arabia?

7 A. I don't recall seeing that, no.

8 Q. Do you know whether or not there is a Saudi
9 custom whereby personal and business funds of
10 individuals are routinely temporarily commingled into
11 the same bank account?

12 A. I'm not familiar with Saudi customs on
13 financial matters.

14 Q. Do you know that Soliman al-But'he later paid
15 this money that he at first put in his bank account to
16 al-Haramain Saudi Arabia?

17 MR. CARDANI: Judge, that misleads the facts.

18 MR. MATASAR: Do you know whether or not --
19 I'll withdraw it.

20 BY MR. MATASAR:

21 Q. Do you know whether or not Soliman al-But'he
22 paid this money after he put it in his account to
23 al-Haramain Saudi Arabia?

24 A. No, I don't. I don't know.

25 Q. Do you know whether or not the \$21,000 was

1 compensation to Soliman al-But'he in any fashion?

2 A. I do not.

3 Q. Mr. Cardani asked you what you knew about
4 Mr. El-Fiki's donation, right?

5 A. Yes.

6 Q. Did you review an FBI report about the
7 donation?

8 MR. CARDANI: Objection, Your Honor, hearsay.

9 THE COURT: Well, the question whether he
10 reviewed it is not. Overruled.

11 BY MR. MATASAR:

12 Q. Okay. And did the report by the FBI also
13 contain an extensive analysis by the Egyptians of
14 Mr. El-Fiki's finances?

15 A. Yes, it did.

16 Q. Was there any indication whatsoever in the
17 report that you read that Mr. El-Fiki's -- that the
18 money Mr. El-Fiki donated was of questionable origin?

19 A. None whatsoever.

20 (Discussion held off the record between
21 Mr. Matasar and Mr. Wax.)

22 MR. MATASAR: Thank you, Mr. Owens.

23 MR. CARDANI: I have nothing else, Judge.

24 THE COURT: You may step down. We'll take a
25 short break.

1 (Jury exits the courtroom 10:53 a.m.)

2 THE COURT: Counsel, I have another matter
3 scheduled during the break.

4 (Recess: 10:53 until 11:12 a.m. Jury absent.)

5 MR. MATASAR: Your Honor, I forgot to ask
6 Mr. Owens a question. It was a redirect question, and
7 I'd ask the court's indulgence to let me ask him that
8 question.

9 THE COURT: You may. It's a question?

10 MR. MATASAR: It's actually A and B. It's 1A
11 and 1B.

12 THE COURT: You get credit for admitting that
13 upfront.

14 MR. MATASAR: Thank you. Once in my life, I
15 said only one question, and I actually did, and the
16 court was like waiting for more.

17 THE COURT: Go ahead and take the stand.

18 (Jury enters the courtroom at 11:14 a.m.)

19 THE COURT: Jurors, just a couple more
20 questions for Mr. Owens.

21 BY MR. MATASAR:

22 Q. Mr. Owens, Mr. Cardani asked you many
23 hypothetical questions during your cross-examination
24 that were not based on this case about the need to
25 report certain matters to the IRS.

1 A. Correct.

2 Q. In this case, in this case, were such reporting
3 requirements applicable given this donation?

4 MR. CARDANI: Excuse me, how does he know that?

5 THE COURT: Yeah. Is that an objection?

6 MR. CARDANI: I'm sorry. I object.

7 THE COURT: It's sustained.

8 BY MR. MATASAR:

9 Q. From what you know about the case, from what
10 you've read in the e-mails and other materials, were
11 those questions applicable to this case?

12 A. They were not.

13 MR. MATASAR: Thank you.

14 RE CROSS-EXAMINATION

15 BY MR. CARDANI:

16 Q. Just one question. No matter what, can you lie
17 to the IRS in a Form 990 under penalties of perjury?

18 A. You cannot.

19 MR. CARDANI: Thank you.

20 THE COURT: You may step down. Your next
21 witness, please.

22 MR. WAX: We would call Agent Boyer.

23 MR. MATASAR: The witness is excused, Your
24 Honor? Your Honor, may the witness be excused?

25 THE COURT: Yes.

1 THE CLERK: Please raise your right hand.

2 (The witness was sworn.)

3 THE CLERK: Please have a seat. Please speak
4 into the microphone here. And there is water, if you
5 would like some.

6 Please state your full name and then spell it
7 for the record.

8 THE WITNESS: Joseph J. Boyer, B-O-Y-E-R.

9 DIRECT EXAMINATION

10 BY MR. WAX:

11 Q. Sir, could you tell the members of the jury,
12 please, how you are employed?

13 A. I'm a supervisory special agent with the FBI.

14 Q. In what city, sir?

15 A. Portland.

16 Q. And how long have you been with the FBI?

17 A. A little over 28 years.

18 Q. You were then working with them in September of
19 2001?

20 A. Yes, sir.

21 Q. Did you speak with my client, Mr. Seda, on
22 September 15 of 2001?

23 A. Yes, I did.

24 Q. Did he mention to you a property or prayer
25 house in Springfield, Missouri?

1 A. He did.

2 Q. What did he tell you about it?

3 A. He stated that the al-Haramain Foundation
4 funded the purchase of the property in Springfield.

5 Q. Did he mention any dollar amounts that you
6 recall?

7 A. I recall 300 to \$325,000.

8 MR. WAX: Thank you. I have no further
9 questions.

10 THE COURT: Cross.

11 CROSS-EXAMINATION

12 BY MR. CARDANI:

13 Q. Special Agent Boyer, during that same
14 conversation, did Mr. Sedaghaty mention the subject of
15 Chechnya at all?

16 A. No, sir.

17 Q. Did you know, coming into that interview,
18 anything about his involvement in a financial
19 transaction involving an area of the world called
20 Chechnya?

21 A. No, I did not.

22 Q. This interview occurred inside the premises of
23 the al-Haramain building in Ashland?

24 A. Yes.

25 Q. Upstairs or downstairs?

1 A. Downstairs in the prayer room.

2 Q. Could that be -- if we could bring up Exhibit
3 64, please. Now, if we could go to the first page of
4 that. This is the upstairs. Do you see the house down
5 below. Is that the house that you were in, Agent Boyer?

6 A. Yes, sir.

7 Q. And do you see a prayer room referred to as
8 room J in the upstairs?

9 A. Yes, I do.

10 Q. All right. Is that what you are referring to
11 as where you interviewed -- you spoke to the defendant?

12 A. Yes.

13 Q. All right. And did you go downstairs at all?

14 A. No, we did not.

15 Q. Is that because Mr. Seda allowed you to tour
16 the upper floor of the residence, foundation, but not
17 the lower level?

18 A. That's what's stated in the interview report,
19 yes.

20 Q. Now, did Mr. Sedaghaty give you a bunch of
21 information on the religion of Islam?

22 A. Yes, he did.

23 Q. And did you review that -- I know it's many
24 years ago -- but did you review that inventory before
25 coming into court today?

1 A. Yes.

2 Q. I'm going to show you a couple of books. I'll
3 just hold them up. Did any of them include this thing
4 called the Noble Qur'an?

5 A. That's not listed in the interview report.

6 Q. And a book called *Islamic Guidelines For*
7 *Individual and Social Reform*, was that amongst the
8 literature that Mr. Sedaghaty gave you?

9 A. Not according to the documented record, no,
10 sir.

11 MR. CARDANI: That's all I have.

12 MR. WAX: No redirect, Your Honor. Thank you.

13 THE COURT: Thank you. Your next witness,
14 please.

15 MR. CASEY: Call David Rodgers.

16 THE CLERK: Please raise your right hand.

17 (The witness was sworn.)

18 THE CLERK: Please have a seat.

19 THE WITNESS: Thank you.

20 THE CLERK: Please speak into the microphone
21 here. And there is water if you would like some.

22 THE WITNESS: Thank you.

23 THE CLERK: Please state your full name, then
24 spell your name for the record.

25 THE WITNESS: My name is David Rodgers,

1 D-A-V-I-D, R-O-D-G-E-R-S.

2 DIRECT EXAMINATION

3 BY MR. CASEY:

4 Q. David, as I understand, you were born in
5 Eugene, Oregon; is that correct?

6 A. Yes.

7 Q. And where do you live now?

8 A. I am living in Riyadh, Saudi Arabia.

9 Q. Okay. Are you married?

10 A. Yes, I am.

11 Q. Do you have a family?

12 A. I do. I have five children.

13 Q. Okay. Are they with you in Riyadh, Saudi
14 Arabia?

15 A. They are, yes.

16 Q. And you've known Pete Seda for a number of
17 years, right?

18 A. For a very long time, yes.

19 Q. Dating back to when?

20 A. Oh, since my high school years, a long time
21 ago.

22 Q. Okay. How old are you?

23 A. I am 49 years old now.

24 Q. Okay. What is your occupation?

25 A. I'm a professional horse trainer actually.

1 Q. And is that what you do in Riyadh, Saudi
2 Arabia?

3 A. Roughly. I'm actually technically a marshal on
4 the horse racing track, so I patrol the track and make
5 sure that the people who are using the race track keep
6 the rules. And on race day, I run the escort services,
7 called pony horses. We escort the race horses to the
8 starting gates.

9 Q. Have you had occasion over the years to train
10 police departments, for example, and other law
11 enforcement agencies with respect to the use of horses?

12 A. In the United States or in Saudi Arabia?

13 Q. Either, sir.

14 A. I have attended a seminar and assisted a man
15 who was a specialist in police horse training, yeah.

16 Q. Okay. You went to high school, as I understand
17 it, in Ashland; is that correct?

18 A. Ashland High School, yes.

19 Q. So you moved to Ashland as a young boy?

20 A. Yeah, seventh grade, I started. I went through
21 junior high and high school in Ashland, Oregon.

22 Q. Were you involved in sports?

23 A. Yes, I was. I was on the wrestling team and I
24 was also on the football team every year.

25 Q. And what did you do after graduating from high

1 school?

2 A. After graduating from high school, I went on --
3 immediately after graduating from high school, I took --
4 went on a long pack trip. I rode up the Pacific Crest
5 trail all summer, and just, you know, wanted to find out
6 what life was all about, and decided to ride up into the
7 mountains with my horse and traveled all summer.

8 Q. Who did you go with?

9 A. Some of the guys I went to high school with.
10 Pete was one of them, a good friend and such. And he
11 was involved in the horse packing trip. And Rob Brown
12 and John Dunn, and guys like this.

13 Q. Did there come a time when you lived on a piece
14 of property in Sprague River?

15 A. Yes, yes.

16 Q. Where is that, sir?

17 A. The Sprague River is kind of a little bit
18 northeast of Klamath Falls. And, yeah, we wanted to
19 live out on the land. You know, we loved nature, loved
20 horses, you know, loved the environment. And I wanted
21 to live kind of a natural life out there. And so we
22 decided, you know, we weren't ready to jump right into
23 college or careers, and so we went out and lived on the
24 land for a while to, you know, sort it out and enjoy
25 life.

1 Q. Who was "we"?

2 A. Myself, and Pete was also there living with me,
3 and Rob Brown. And, again, you know, different people
4 came and went from the land that we were living on out
5 there.

6 Q. Fairly primitive circumstances?

7 A. Oh, yeah. We wanted to keep it simple. I
8 lived in a cabin, a log -- or a wall tent, kind of a
9 canvas cabin. I guess you'd call it an elk hunting tent
10 type of thing at first. Eventually I got trailers and,
11 you know.

12 Q. How did you earn a living?

13 A. You know, I worked on -- I worked for local
14 ranchers. We -- you know, there was a lot of ranchers
15 out there that needed ranch hands and stuff like that.
16 And Pete was a good contractor with the Forest Service,
17 type -- reforestation type jobs, you know, so we worked
18 those type of jobs, too, seasonally.

19 Q. Did you do any hunting?

20 A. Yeah, yeah. I loved hunting, yeah.

21 Q. Is Pete a hunter as well?

22 A. Yeah.

23 Q. You all have weapons?

24 A. Yeah.

25 Q. What kind?

1 A. We had handguns and rifles and such, you know.
2 I'm an Oregonian, I mean, my dad was a Boy Scout leader,
3 and, you know, he taught me to shoot guns from an early
4 age, and loved the outdoors, and you know.

5 Q. Was it fairly common out there in Sprague River
6 to have handguns and weapons?

7 A. Oh, yes, real common, yeah. Everybody has a
8 rifle in the back of their truck, you know. It's like
9 very common and normal.

10 There is an Indian reservation out there. And
11 they like to drink. And they'd come around and, you
12 know, cause trouble sometimes. And there is ranchers
13 and, you know, it was kind of the wild West a little bit
14 out there.

15 Q. Are you a practicing Muslim, sir?

16 A. I am.

17 Q. Have you always been?

18 A. Well, I haven't always been. I became a Muslim
19 when I was living out there in Sprague River about 1982.

20 Q. And how did that come about?

21 A. Well, you know, we were searching different,
22 you know, belief systems in the world, basically. And I
23 was reading the books of the -- I was raised a Catholic.
24 My parents were Catholic. And so I knew something about
25 the Bible and Christianity and everything. And I wanted

1 to know what the rest of the world's religions believed
2 in. You know, so I read basically about what the
3 Buddhists believe in, the Hindus believe in, and
4 everything I could find. American Indians religion. I
5 mean, I just read everything.

6 Q. Fair to say that at that time in your life you
7 were on kind of a spiritual journey or quest?

8 A. Oh, definitely. I would definitely consider
9 myself spiritual. I was living out in the mountains,
10 and wanted to be close to nature, and God, and, you
11 know. So eventually we were reading different books
12 and, you know, Pete had a copy of the Qur'an, and he
13 just offered it to us like, well, you're reading
14 everybody's book, go ahead and check this one out. This
15 is the book of the Muslims.

16 Q. Was he a practicing Muslim at that time?

17 A. Not really, no.

18 Q. Was he pushing Islam?

19 A. He wasn't pushing Islam at all. As a matter of
20 fact, he just gave us a copy of the Qur'an and said,
21 check it out, you know, just like everything else. We
22 used to sit around the camp fire and discuss
23 philosophies and what everybody believed in and what we
24 liked and what we didn't like in this book or that book.
25 Islam --

1 Q. Excuse me, I didn't mean to interrupt.

2 A. Islam just kind of grew on me. I just took a
3 liking to its monotheistic message. And I was kind of
4 looking for unity in religions. And it's -- it states
5 that, you know, Moses, Jesus, Mohammed were all prophets
6 and all believed in the same God, and that appealed to
7 me. So it just kind of -- I tended towards it and it
8 grew on me.

9 Q. So you had lots of discussions?

10 A. Oh, yeah, lots of discussion.

11 Q. About philosophies and religions and so on?

12 A. Yes, sir.

13 Q. Were you into Native American religions at all?

14 A. Oh, yeah.

15 Q. And Pete, was he as well?

16 A. Yeah. We used to go into sweat lodges with the
17 Indians, you know, there were these Indian medicine men
18 and they would have -- Indians would have, you know,
19 like powwow kind of get-togethers, and we used to go
20 sweat with them, pray in their sweat lodge, and tried
21 everything, you know, all kinds of stuff.

22 Q. How long were you guys out there?

23 A. I lived out there for about four years.

24 Q. How about Pete?

25 A. Similar, come and go, about this time, three or

1 four years.

2 Q. Did there come a time when you thought you
3 needed to get a -- sort of a more regular source of
4 living?

5 A. Yeah. I mean, we were living on this piece of
6 land, and the man who owned it was being pretty lenient
7 with us and let us make some payments. And eventually
8 after a few years, he said, hey, guys, why don't you
9 just buy this land from me. If you're going to live
10 there, you gotta pay for it. So financial reality set
11 in. And I started looking for work under what I loved
12 doing, which was working with horses. So I basically
13 went out and started getting jobs on horse ranches and
14 such.

15 Q. Which ranches, can you think of any at the
16 moment?

17 A. I worked in early times as a wrangler, which
18 is -- and a guide basically on a place called Scott
19 River Resort in northern California, and that was to
20 take people who wanted to rent horses and ride up in the
21 wilderness and be a guide for them. And I worked on
22 another place in kind of the White City area, which is
23 near Medford, called the Diamond L Stables. Same thing,
24 it was a rental horse place. Eventually I got working
25 on quarter horse ranches. I worked at C-2 Cattle

1 Company which is in the White City area, as, you know,
2 first as an irrigator on the ranch, and then eventually
3 I worked as an assistant to the trainer.

4 Q. So in these experiences, did you learn quite a
5 bit about horses and how to train horses and how to
6 break horses?

7 A. Absolutely. I learned tremendous amount, sure.
8 It was -- it'd become a profession for me then.

9 Q. Okay. And in addition to working on ranches
10 during this time in your life, did you have occasion to
11 work with Pete on his arborist type business?

12 A. Yeah, I mean, he continued along the lines of
13 working with trees and Forest Service type jobs, so, you
14 know, sometimes in between these ranch jobs, or, you
15 know, whenever he had a contract I could work with him,
16 I worked with him on reforestation jobs, and cone
17 picking jobs, and different stuff like this.

18 Q. So is it fair to say that you and Pete shared a
19 love of the outdoors and nature?

20 A. Absolutely, yes.

21 Q. So you are now living in Saudi Arabia?

22 A. Yes, I am.

23 Q. And why are you living there? And first of
24 all, how long have you been living there? And for
25 what -- why are you there?

1 A. I've been living there for about 11 years now.
2 And I first went there to study Arabic, because I wanted
3 to understand the religion that I was professing. And I
4 wanted to learn the language. And I wanted the
5 experience of going to another country and all. And I
6 got the opportunity, so I went actually to initially
7 study Arabic. And, you know, honestly I was a really
8 lousy student. And their program was real difficult.
9 And it was fully in Arabic. And it was kind of an
10 immersion program. And I basically bombed out, and
11 wasn't very happy about it.

12 And my good friend, Pete, advised me real good
13 at one point, he said, just go back to what you are good
14 at, you know, and that's training horses. So I started
15 looking at what the people in Saudi Arabia were doing
16 with horses and who has horses, and what's the business
17 like there.

18 Q. Is that a big thing over there?

19 A. They love their horses, that's for sure. They
20 love their horses. And the biggest business --

21 Q. So what happened --

22 A. -- there is basically horse racing,
23 thoroughbred racing, thoroughbred flat track racing.
24 And I showed some people what I could do. I specialize
25 in kind of a special horse psychology type of training.

1 And I showed some people what I could do. And somebody
2 offered me, you know, a job and a contract, and said
3 I'll bring you over here, and your family, and you can
4 stay and work for me, teach my people and teach my
5 horses.

6 Q. Before you moved over there for that purpose,
7 you were living in Ashland, right?

8 A. Yes.

9 Q. In the Ashland area?

10 A. Yeah, after we basically moved off the land at
11 Sprague River, I moved back to Ashland, which I had went
12 to school, and my mother and father was there, and I
13 moved back to Ashland, yeah.

14 Q. And did you become acquainted with a kind of
15 Muslim community in the Ashland area?

16 A. Oh, yeah, definitely, you know.

17 Q. How did that come about, sir?

18 A. It was a long time before I knew any other
19 Muslims who considered themselves a Muslim, besides the
20 group that I had basically lived with in Sprague River.
21 And a few of us had, you know, really inclined toward
22 Islam, considered ourselves Muslims eventually after
23 living out there and reading all the books, as I
24 mentioned.

25 And I didn't really know any other Muslims

1 besides our group. But one day Pete called me up and
2 told me there is a group of Muslims in town, and they
3 are inviting everybody to a dinner, you know, asking us
4 to, you know, get together and have congregational
5 prayers and such like that. So I started meeting
6 actually other Muslims, you know, outside our little
7 community.

8 Q. Okay. And did there come a time when Pete
9 began to invite this group of other Muslims and yourself
10 to his house, as it were, or he was in a trailer, I
11 guess, at that time, right?

12 A. Yeah. You know, we didn't have a place to
13 pray, you know, our congregational prayer, and some of
14 the guys volunteered. And Pete was one of them. And
15 Abdi was another. And we used to just meet in his
16 house, and, you know, pray in one of his rooms, you
17 know, our once a week congregational prayer.

18 Q. At some point in time this group of people of
19 whom -- how many were there at that time, roughly?

20 A. Just a handful, probably 10, 15 people.

21 Q. Where do they come from? Are they mostly from
22 Ashland or --

23 A. Well, probably a majority of them were foreign
24 students going to Southern Oregon State University in
25 Ashland, majority of them. There are just a few of us

1 people who were local Muslims or converts.

2 Q. Did there come a time when Pete and you got
3 together and decided to kind of form a more structured
4 approach to the prayer sessions? Let me direct your
5 attention -- are you familiar with the Qur'an
6 Foundation?

7 A. Yeah, certainly.

8 Q. How did that come about?

9 A. Yeah, I -- the earliest recollection I remember
10 was there was a time in Ashland where Pete called me up
11 one time and said, hey, there is somebody making a talk
12 at the college about Islam, and let's go listen to it.
13 So we went to this place. It was -- I don't remember if
14 it was at the college or at another building. But,
15 anyway, we went to this place, and the man stepped up to
16 the microphone and he said, I'm not a Muslim, but I'm
17 going to talk today about Islam. And we were kind of
18 disappointed. And we said, huh, we consider ourselves
19 Muslims. We should be making that talk. Maybe next
20 year we'll organize and try to represent our own
21 religion here. There is nobody -- we're the local
22 Muslims living in town, and we wanted to represent the
23 religion ourselves. So we started getting organized
24 like this, you know. I think this is how it came about.

25 Q. Okay. Did you file papers? Did you become a

1 legal entity --

2 A. Yeah, yeah.

3 Q. -- by the name of the Qur'an Foundation?

4 A. Of course, we wanted to be a legal nonprofit
5 organization, you know, in hopes that we would, you
6 know, grow and be able to be more, you know,
7 representation of our religion and such.

8 Q. So essentially you and Pete founded this
9 organization?

10 A. Yes.

11 Q. Called the Qur'an Foundation?

12 A. Yes.

13 Q. Okay. And what was the purpose of that
14 foundation?

15 A. To be representatives of our religion. I mean,
16 Islam was greatly misunderstood and absolutely poorly,
17 if not represented at all, in our region in southern
18 Oregon and northern California basically. So we wanted
19 to be representing our own religion to try to build
20 bridges and understanding, you know, help the local
21 Muslim community and this type of thing.

22 Q. What did you all do in that connection?

23 A. What did we do?

24 Q. What did you do to further that purpose?

25 A. Oh, I mean, we -- like I said, we started

1 organizing to make talks, you know, anybody who wanted
2 to hear about what the Islam was, we would, you know, go
3 to -- you know, the college had that multicultural,
4 multi-religious day where different faiths were allowed
5 to, you know, step up and represent their faith, and
6 tell basically the foundations of it, and this type of
7 thing.

8 Q. Did you distribute literature?

9 A. Oh, yeah, we distributed literature. You know,
10 we wanted people to know, you know, what we were
11 believing and such.

12 Q. So what kind of literature did you distribute?

13 A. Mostly, you know, I mean a lot of people who
14 have converted to Islam simply did so by reading the
15 Qur'an independently. And we felt like, you know, this
16 was a good way to -- at least -- the Qur'an was not even
17 available in public places. If you went to most
18 libraries back at that time, they didn't have one. So
19 we decided to place them in public places where people
20 could get them if they wanted them.

21 Q. Who purchased the Qur'ans?

22 A. Pete was always really, you know, sincere and
23 diligent and generous about this thing. And most of the
24 time, he reached into his own pocket and paid for these
25 things himself.

1 Q. Did you have occasion to distribute some of
2 this material, the Qur'ans, for example, to local
3 prisons?

4 A. Yeah, certainly, yeah, we did.

5 Q. So why are you doing this? Why are you
6 distributing this literature?

7 A. As I said, Islam was really poorly represented
8 and misunderstood, you know, in the whole -- our whole
9 region, and in the country in general in this country.
10 And we wanted to, you know, be able to represent it
11 properly. And so we wanted to get the book out there,
12 the Qur'an itself, and let it speak for itself, and let
13 people read it if they wanted to read it.

14 Q. Did you think it would have an impact on
15 prisoners, in particular?

16 A. Well, certainly. I mean, these are people who
17 are in jail, in trouble, you know, have problems in
18 their life and such, and --

19 Q. What impact did it have on you, your
20 association with Islam and your conversion to Islam?

21 A. I mean, it certainly made me a much better
22 person, a much more straight person. I don't drink. I
23 don't do drugs. I don't, you know, do all kinds of
24 things that keep me on a straight, even keel, you know,
25 tending towards getting married and having a good family

1 life and this type of thing.

2 Q. Did it ever occur to you at any time or insofar
3 as you're personally aware, did it -- do you know if it
4 ever occurred to Pete that you were distributing the
5 Qur'an and other literature to prisoners to encourage
6 participation in jihad or militant activities?

7 A. Not at all. On the contrary. We believe that
8 if you became a good Muslim and you would live an honest
9 and straight and law abiding life, basically, would be
10 able to help the reform of prisoners actually.

11 Q. Now, I'm going to ask you more about this in
12 detail a little bit later, but there came a time when
13 the Qur'an Foundation -- strike that. There came a time
14 when al-Haramain developed a United States office in
15 Ashland, correct?

16 A. Yes, yes.

17 Q. And Pete and you were associated with
18 al-Haramain in Ashland, correct?

19 A. Yes.

20 Q. Okay. And al-Haramain was providing you with
21 books and literature and Qur'ans to distribute to the
22 public, to whomever was interested, including prisoners,
23 correct?

24 A. Yes.

25 Q. And am I correct in understanding that the

1 Qur'an that was initially provided by al-Haramain for
2 that purpose had an appendix attached to it called the
3 Call to Jihad?

4 A. Yes, it did.

5 Q. And did there come a time when the al-Haramain
6 U.S. folks were involved in getting a revision to that
7 first version of the Qur'an?

8 A. Say that again. I didn't quite understand.

9 Q. Yes. Did there come a time when another
10 version of the Qur'an was sent by al-Haramain for
11 distribution?

12 A. Yeah. I mean, eventually, you know, the Qur'an
13 that they were providing us with, you know, we didn't
14 feel was very appropriate in a lot of ways. And they
15 eventually, you know, removed that appendix. And I
16 forget what issue it was, but they changed it and gave
17 us another version of it basically.

18 Q. Okay. There was some testimony in this case
19 about a questionnaire that was associated with the
20 distribution of that literature. Can you tell us about
21 that questionnaire, what you know about it?

22 A. There was a -- say it again. There was a what?

23 Q. There was a questionnaire, are you familiar
24 with that?

25 A. A questionnaire, yes.

1 Q. What was that all about?

2 A. The questionnaire to the prisoners?

3 Q. Yes, sir.

4 A. Oh, yes. Well, in our work with the prison
5 system, you know, these people are in prison, and
6 anything free that you can send them, they would take,
7 you know. And sometimes they would take things just to
8 sell it for cigarettes. So we didn't want to send them
9 multiple Qur'ans. So we had a way of not only
10 understanding what we had sent them with a
11 questionnaire, but what was their level of understanding
12 to send them appropriate books. Because, frankly, they
13 would lie to you sometimes, and say, yeah, I'm a Muslim,
14 and if you asked them in a questionnaire, you would see
15 he doesn't know the simplest things about Islam. So
16 with a questionnaire, we could evaluate where is this
17 guy at, you know, and what had we sent him, if anything,
18 before.

19 Q. Did you get many requests from prisoners or
20 from prison officials to send material -- this Islamic
21 material?

22 A. Tremendous, overwhelming, overwhelming amount
23 of requests for --

24 Q. What do you mean by "overwhelming"?

25 A. I mean boxes full of letters, you know, saying

1 I'm in prison, this and that, here is my story, could
2 you please send me a Qur'an or could you send me any
3 other literature, this and that. Or thank you very much
4 for sending me a Qur'an, can you send me more material.
5 You know, just a tremendous amount of --

6 Q. Was it possible for the Qur'an Foundation to
7 keep up with the requests?

8 A. Impossible. There is no way -- we had so much
9 requests for Qur'ans and Islamic materials from the
10 prison system, that there is no way we could possibly do
11 it ourself. We couldn't even afford our own mosque in
12 Ashland or prayer hall.

13 Q. Now, there came a time when al-Haramain Saudi
14 Arabia became interested in what the Qur'an Foundation
15 was doing, and eventually they established an office in
16 Ashland, correct?

17 A. Yes.

18 Q. Tell us how that came about, please.

19 A. Well, when I went to Saudi Arabia to study
20 Arabic, I had been working with, you know, representing
21 the faith to non-Muslims and doing that in America.
22 When I went over there, I looked into who's doing that
23 type of work there. There is a lot of non-Muslim
24 workers there, too. And I met some people who wanted an
25 English speaker to speak to people who didn't understand

1 Arabic and such, and also to introduce or represent
2 Islam to them. So I got involved with some people over
3 there that were doing that. And I actually met some of
4 the people from al-Haramain who were Islamic charitable
5 organizations providing books and literature, and all
6 kinds of orphanages. And before probably I even asked
7 them if they could help us with the books in America,
8 they asked us would you like to distribute books in
9 America, Islamic books in America, Qur'ans and such.

10 Q. Was Mr. al-But'he one of the people that you
11 met?

12 A. Yeah, Soliman al-But'he.

13 Q. Okay. Did you speak to him specifically about
14 the distribution of Qur'ans here by the Qur'an
15 Foundation?

16 A. Yeah, sure.

17 Q. And was he the guy that suggested that they
18 might be able to help out?

19 A. Yeah, he's the guy.

20 Q. Then what happened after that?

21 A. I put him in contact with Pete, who was in
22 America, and worked doing this work. And let them
23 basically work out the details of how they could send
24 books, and what they were going to do and this type of
25 thing.

1 Q. So who is this guy, al-But'he?

2 A. Soliman al-But'he, he works as a municipality
3 officer. He basically manages parks, trees, you know,
4 landscaping of the parks in Saudi Arabia.

5 Q. So you guys hit it off, you had common
6 interests?

7 A. Yeah, yeah, he was a very nice guy, spoke
8 English very well, you know, he was athletic, you know,
9 nice guy, we hit it off.

10 Q. And then you put him in touch with Pete?

11 A. Yes, I put him in touch with Pete to talk about
12 helping us out with the demand for Qur'ans and books in
13 America.

14 Q. So at some point in time after that, there was
15 a formalized relationship that was established here in
16 the United States?

17 A. Yes.

18 Q. Right?

19 A. That's right.

20 MR. CASEY: Would you please put up
21 Exhibit 602A, please. Your Honor, I believe 602A has
22 been received, so request permission to publish to the
23 jury?

24 THE COURT: If it's been received, you may.

25 BY MR. CASEY:

1 Q. Mr. Rodgers, do you recognize 602A?

2 A. Yeah, I mean, generally, yeah, I see it. There
3 you go, that's better.

4 Q. It's a letter dated March 6, 1998?

5 A. Yes.

6 Q. Do you want to scroll down to the bottom.

7 Okay. Basically what does this appear to you to be,
8 sir?

9 A. This one here is a monthly report --

10 Q. Yeah.

11 A. -- from --

12 Q. From al-Haramain?

13 A. Activities, yeah.

14 Q. Let's move on to 602B, please. Also, it's been
15 received. What is 602B, sir?

16 A. Can you make it a little bigger? Yeah, there
17 you go, sorry.

18 Q. Appears to be a statement of purpose?

19 A. Yeah, this is our statement of purpose, yeah.

20 Q. The statement of purpose between?

21 A. Basically a mission statement.

22 Q. I'm sorry, sir, can you read the first line
23 under the heading?

24 A. The first line under the heading, "Statement of
25 declaration between Qur'an Foundation and al-Haramain

1 Foundation."

2 Q. Okay.

3 THE COURT: These are some of the exhibits,
4 members of the jury, that I received but not for their
5 truth.

6 BY MR. CASEY:

7 Q. Would you read the paragraph beginning "we all
8 mutually stand"?

9 A. Yes. "We all mutually stand against terrorism
10 or ever engaging in any subversive activities against
11 any government, race, or gender."

12 Q. The next paragraph?

13 A. "We mutually agree to cooperate for the purpose
14 of Islamic education; to promote peace through
15 understanding of Islam."

16 Q. And the next paragraph, sir?

17 A. And "we mutually agree to never support or
18 approve of any statement or acts of terrorism. Such is
19 totally against our beautiful religion of Islam."

20 Q. And the next paragraph?

21 A. "We shall not break any governmental laws or
22 cause any mischief on earth."

23 Q. And the final paragraph?

24 A. "We mutually agree to uphold the Qur'an and the
25 Sunnah of our kind, gentle, and loving Prophet. Peace

1 be upon him."

2 Q. And there are some signatures on here. Do you
3 recognize the first signature?

4 A. The first signature is Pete's, and the second
5 one is mine.

6 Q. And then on the right-hand column, there
7 appears to be -- there appear to be a couple of
8 signatures there. Do you recognize those?

9 A. Yeah. Well, it's written there a Soliman
10 al-But'he. I can't read his signature but, yeah.

11 Q. So Soliman al-But'he is the person that we've
12 been referring to as al-But'he, correct?

13 A. al-But'he, yeah, yeah.

14 Q. And, indeed, are you -- is it your recollection
15 that these representations in this document correctly
16 and accurately reflect the commitment of your
17 organization to peaceful promulgation of Islam?

18 A. Absolutely. I mean, this was our mission
19 statement. Me and Pete sat down together and, you know,
20 put this together, and wanted to be declared and signed,
21 you know, by everybody, that this is what we believe in,
22 this is what we're doing here. We want to educate
23 people about Islam. We're not a terrorist organization.
24 We don't want to break any laws. This is what we're
25 trying to do here. This is clearly a statement, you

1 know, of what we believe in, basically, and what we're
2 doing. It's a mission statement.

3 Q. All right. Can we remove that, please.

4 For a time in your life were you living in what
5 has come to be known as the prayer house that
6 al-Haramain established in Ashland?

7 A. Yes.

8 Q. Okay. And Pete Seda was an active participant
9 in the al-Haramain organization at the prayer house,
10 correct?

11 A. Correct.

12 Q. And you actually lived in the prayer house for
13 a while?

14 A. Uh-huh.

15 Q. Okay. Inside the house?

16 A. Inside the house, yeah, downstairs.

17 Q. You had access to upstairs and downstairs?

18 A. Yeah. Upstairs was, you know, the prayer room
19 basically and some offices, and then downstairs was a
20 small apartment, yeah.

21 Q. And just generally tell us what you did there.
22 What were your functions and what role did you play?

23 A. Yeah. I -- I mean, I did everything from, you
24 know, clean up the place and have it ready for prayer,
25 to actually do, you know, the Friday -- what we would

1 call the Friday sermon, and actually lead prayers
2 sometimes. We took turns with it, you know, different
3 people did it at different times.

4 I would help in packaging and mailing out the
5 Qur'ans. There was a lot of work to be done there. And
6 the office would be receiving these letters, and, you
7 know, evaluating them, and sending the person the right
8 books, and this type of thing, I did this type of thing.

9 Q. So at the prayer sessions, did you have
10 occasion to lead the prayers from time to time?

11 A. I did, actually, from time to time. Yeah,
12 anybody could lead the prayers and sometimes I did.

13 Q. Did you like to do that?

14 A. I couldn't say I really liked to do that, but
15 it was -- somebody had to do it. We had to take turns
16 at it.

17 Q. Did Pete do it?

18 A. Sometimes. Not very often. He didn't care to
19 really lead the prayer too much, but, yeah, sometimes he
20 did.

21 Q. And I guess there were computers that were
22 located in the house?

23 A. Computers in the office, yes.

24 Q. Office computers?

25 A. Okay.

1 Q. You had access to some of the computers?

2 A. Yeah.

3 Q. And from time to time, there would be -- appear
4 on the computer some materials relating to Chechnya; is
5 that correct?

6 A. Perhaps, yeah. Nothing specifically I
7 remember, but, yeah, probably.

8 Q. Was Chechnya a major topic of conversation
9 within the prayer group?

10 A. Not Chechnya, per se. I mean, being Muslims,
11 you know, we're concerned with what's going on around
12 the Muslim world. And if there was, you know,
13 oppression or conflicts of wars or, you know, some sort
14 of turmoil going on, we would generally talk about what
15 we heard in the news and such, yeah.

16 Q. What about political issues generally, were
17 they a major -- insofar as they would affect Muslims and
18 Islamic political issues, geopolitically around the
19 world, was that a major topic of concern or focus in the
20 prayer house?

21 A. Not a major topic of concern. I mean, we --
22 you know, as we said even in our mission statement,
23 we're really non-political. We just wanted to represent
24 the basic tenets and basic foundations, teachings of our
25 religion, and we didn't really get very political about

1 stuff.

2 Q. Okay. Do you ever remember Pete making any
3 pitch on behalf of militant Islamic activity of any
4 kind?

5 A. No.

6 Q. Or the mujahideen?

7 A. A pitch or -- no.

8 Q. Or solicitation or assistance.

9 A. Certainly not, no. If Pete ever wanted to do
10 any sort of help outside of our own country and
11 community, he wanted to help orphans. He had a real
12 love and passion in his heart to want to really help,
13 you know, those poor people who are basically at the
14 bottom, you know, of a conflict, who are kind of
15 innocent and had, you know, nothing to do or say about
16 it. And if anything, I remember him talking to me about
17 wanting to help orphans.

18 Q. During your stay in Saudi Arabia or your
19 residency in Saudi Arabia, you have had occasion, have
20 you not, from time to time to meet with al-Haramain
21 officials to discuss certain matters?

22 A. Yes.

23 Q. And generally what would be the topics of such
24 meetings?

25 A. I mean, if they called me in to want to talk to

1 me -- they're a big, you know, Arabic, Saudi charity,
2 and, you know, if they wanted to know something about,
3 you know, what we were going to do in America, and how
4 we were going, you know, to distribute books or how is
5 the thing going there, and how can we help you and run
6 it smooth, it would be about this simple, operational
7 type of things.

8 Q. Any recollection of them ever mentioning to you
9 any attempts to solicit funds or to provide assistance
10 to Islamic fighters or mujahideen?

11 A. No, never.

12 THE COURT: We'll be in recess until 1 o'clock.

13 (Lunch recess at 11:57 a.m.)

14 (Further proceedings were had by Reporter
15 Deborah Bonds, and are bound under separate cover.)
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1 CERTIFICATE

2 I, Deborah Wilhelm, Certified Shorthand Reporter
3 for the State of Oregon, do hereby certify that I was
4 present at and reported in machine shorthand the oral
5 proceedings had in the above-entitled matter. I hereby
6 certify that the foregoing is a true and correct
7 transcript, to the best of my skill and ability, dated
8 this 7th day of September, 2010.

9
10
11
12 /s/ Deborah Wilhelm

13 _____
14 Deborah Wilhelm, RPR
15 Certified Shorthand Reporter
16 Certificate No. 00-0363
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